LEGAL

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Recent Decisions.

Company Prospectus. Offer to the Public. Circulation of Prospectus by Directors among Friends.—The Companies Act, 1903, section 95, provides that no allotment shall be made of any share capital of a company offered to the public for subscription unless the amount named in the prospectus as a minimum subscription, upon which the directors may proceed to allotment, has been subscribed. If the foregoing conditions are not complied with in 90 days within after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to the applicants without interest.—The Combined Incandescent Mantles Syndicate (Limited) was formed as an incorporated syndicate for the purpose of securing an option to purchase certain property and to promote a company for the purpose of working it. A prospectus marked "Strictly private and confidential: not for publication," was printed and some of the Directors, without any authority from the company, sent copies to their friends. Some shares in the syndicate were subscribed for and allotted, but not the amount named in the prospectus as the minimum upon which the Directors could proceed to allotment. Mr. Sherwell, a subscriber, sued the company to recover the amount paid by him for his shares on the ground that the share capital had been offered to the public for subscription, that the conditions required by the Companies Act had not been complied with, and that therefore, the time prescribed having expired, he was entitled to have his moneys repaid to him.

Held by Warrington, J., that while Mr. Sherwell would have been so entitled, had share capital been offered to the public for subscription, there had been no offer of shares to the public within the meaning of the Act, and that the section means that there must be an offer of share capital by the *Company* and not by an individual who chooses to come in, whereas in the present case there was nothing but an intention on the part of the existing members of the Company to keep the share capital to themselves, and a few other persons whom they might like to bring in. —*Sherwell* v. *Combined Incandescent Mantles Syndicate* (*Limited*). 23 *Times L.R.* 482.

Life Insurance. Suicide. Evidence of Motive.—H. J. Blake, the manager in Perth, W.A., of an insurance company, while in the midst of a course of embezzlement of the company's moneys, and when he was hopelessly insolvent, effected a policy on his life with the Mutual Life Insurance Co. of New York, in which he warranted that he would not die by his own hand, sane or insane within one year from the issue of the policy. The Inspector of Blake's Company on auditing the books, found that Blake had embezzled large sums, and suspended him. Blake sent a cable to his father asking for £1500 "to avoid legal proceedings." The Inspector warned him that he would be prosecuted, and that if he attempted to abscond, he would be arrested. Two days after the discovery of his embezzlement, and within a year from the issue of the policy, he rode out to a lonely spot in the bush, and his dead body was found shattered by an explosion of dynamite. The Official Receiver in Bankruptcy of his estate sued the Insurance Company for the amount of the policy. The judge directed the jury that "If on the evidence there was anything which inclined them to believe that Blake took his own life, they would be more entitled to give effect to that view if they found that there were strong motives existing for his committing that act; they must therefore look at all the facts, and one, and the most important one, was the presence or absence of motive."

The jury found that Blake died by his own hand. The Official Receiver appealed.

Held by the High Court of Australia that when a man does an extraordinary or wicked thing, there is probably some cause inducing him, or impelling him to do so, and the more heinous the act, the more important the question of motive. When, therefore, the question for consideration is whether such an act is intentional or not, it is of the highest importance to consider whether the person in question, in the circumstances in which he was placed, had any inducement to form such an intention. Held, further, therefore, that the judge had rightly directed the jury, and that a new trial will not be granted on the ground of misdirection, because the judge has laid stress on one point more than another.—*Mutual Life Insurance Co., of New York* v. *Moss.* 4 *Commonwealth L.R.* 311.

Pawnbroker. Stolen Goods Pawned. Order for Restitution on Payment of Amount Advanced. Civil Action.—The Pawnbroker's Act, 1868, sec. 37 provides:—"It shall be lawful for any two or more justices of the peace to order that any goods unlawfully pawned, pledged or exchanged, which shall be brought before them, and the ownership of which shall be established to the satisfaction of such justices, shall be delivered up to the owner by the party with whom they were so unlawfully pawned, pledged, or exchanged, either without compensation or with such compensation to the party as the said justices may deem fit.—Leicester & Co., manufacturing jewellers, entrusted to an agent articles of jewellery for sale on the instalment plan. He pawned some with Mr. Cherryman, a pawnbroker, was prosecuted for larceny, and convicted. The police asked for an order for restitution of the goods to Leicester & Co., and an order was made by the justices that the goods should be restored to Leicester & Co., on payment to the pawnbroker of the amount advanced by him. Leicester & Co. did not ask for the order, or object to its being made, but sued the pawnbroker claiming the return of the goods. The pawnbroker maintained that an order having already been made by a court for the return of the goods, Leicester & Co. were debarred from taking proceedings in another court.

Held, however, by Ridley and Bray J.J., that as the application for the order was not made by the owner, but by the police, Leicester & Co. were not so debarred, and that the provision in the Pawnbrokers' Act did not exclude the civil remedy. Leicester & Co. therefore were held entitled to recover their goods. *Leicester & Co.* v. *Cherryman.* 23 *Times L.R.* 444.

English Factory Acts. Workshop. Floral Decorations. Florist's Shop. —Robert Green (Limited), retail florists, occupied a shop with a room at the back, and employed 10 girls as florists' assistants, selected on account of their taste, and 8 as beginners. These girls attended to retail customers in the shop and made bouquets, wreaths and crosses and arranged floral decorations (in which the flowers were fastened to frames of wood or wire) in the back room. The company was prosecuted for not exhibiting on the premises the prescribed abstract of the Factory and Workshop Act 1901 as required by the Act. It contended that the back room was not a "workshop" as the work done there was not manual labour and the things produced were not "articles" within the meaning of the Act.

Held by Lord Alverstone C.J., Darling and Phillimore J.J. that, if what the girls did in the room was only incidental to their employment, *e.g.*, if they only tied flowers into bunches for purchasers in the shop, the back room might not have been a workshop, but that the crosses and wreaths were "articles" which were both "made" and "adapted for sale" within the meaning of the Act, and that the making of them necessitated "manual labour," which was not necessarily labour requiring a great exertion of strength but might be very slight indeed. The back room was therefore a "workshop." The New Zealand Factories Act is on rather different lines, and defines a factory as "any building, office or place in which two or more persons are employed, directly or indirectly in any *handicraft*, or *in preparing or manufacturing goods* for trade or sale." *Hoare* v. *Robert Green Ltd.* 23 *Times L.R.* 483.

Mercantile Agent. Goods sent by Agent to Auctioneer to Sell. Advance to Agent.—Waddington & Sons, pianoforte manufacturers, employed Hutchinson, a piano dealer in Nottingham as their agent for the sale for cash or on the hire system of pianos consigned to him. He sent a piano so consigned to him to Neale & Sons, auctioneers, to be sold by auction, and obtained from them an advance of £10 against the anticipated proceeds of the sale. He then disappeared. Waddington & Sons found the piano and claimed it from the auctioneers, who, however declined to return it unless their advance of £10 was repaid. By arrangement the piano was sold and fetched £17 17s. Neale & Sons being sued by Waddington & Sons paid this amount into court less their charges and their advance of £10 and contended that Hutchinson was a "mercantile agent" and that his transaction with them was either a sale or pledge in the ordinary course of business and therefore valid under the Factory Act 1887 which corresponds with "The Mercantile Agents Act 1890 (N.Z.)

Held by Darling and Phillimore J.J., that this was not a pledge, but even if it were it was a pledge incidental to a transaction which Hutchinson had no authority to do at all, and therefore not protected and that it was not a sale as the piano was given to Neale & Sons with instructions to sell but there was no sale. *Waddington & Sons* v. *Neale & Sons.* 23 *Times L.R.* 464.

The Workers Compensation for Accidents Act 1900. Master and Servant. "Serious and Wilful Misconduct."—A rule of the L. & S.W. Railway Company prohibited enginemen and firemen from leaving the footplate of their engine, when the latter was in motion. The engine driver of one of the Company's passenger trains, left the foot plate and got upon the tender of the engine, while the train was travelling fast, was struck by an arch of a bridge and killed. He went on the tender apparently to pick better coal than that in the well, as the train was a little late and the pressure of steam had got a little low, but there was no proof that any inferiority of coal caused either fact. He knew of the rule. In proceedings by his widow to obtain compensation: *Held* by the House of Lords that the rule broken by the engine driver was intended for the safety of the servants of the company and the public alike, the breach of it involved danger to the man himself and to those under him, and that he had been guilty of "serious and wilful misconduct" so as to disentitle his widow to compensation. *Bist* v. *L. & S.W. Rly. Co.* 23 *Times L.R.* 471.