..Legal..

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RECENT DECISIONS.

Company Article appointing managing Director for fixed period Implied agreement Statute of Frauds—The Pioneer Rubber Works of Australia Ltd. bought the business of Barnet Glass & Sons. Article 55 of its Articles of Association provided that Barnet Glass should be managing director for ten years at a salary of £500 a year. Mr Glass signed the articles and a consent to act as managing director, and for over four years acted as managing director, and received his salary as such. In 1905 negotiations between the company and the Dunlop Company resulted in the amalgamation of the two companies by way of purchase and absorption by the Dunlop Company of the undertaking and assets of the Pioneer Company, and the taking over and discharging the Pioneer Company's liabilities. Mr. Glass was party to the negotiations and attested the affixing of the company's seal to the final agreement between the two companies. Throughout, however, he asserted his right to be maintained as managing director at a salary of £500 Three weeks after the resolution to wind up the Pioneer Company had been passed, the liquidator, Mr. Shackell, took possession of the company's warehouse, and from that date Mr Glass received no salary Mr Glass had previously written a letter to Mr Shackell claiming by virtue of article 55 to be retained as managing director at a salary of £500 Mr Shackell, instructed by the directors, replied that the contemplated sale to the Dunlop Company would carry with it the obligation to carry out the "contract with you" so far as regards the salary of £500 per annum for the balance of the term of ten years. After some fruitless negotiations with the Dunlop Company for employment, Mr. Glass sued the Pioneer Company for breach of contract. The company argued that the contract (if any) was made before the incorporation of the company and the company was therefore incapable of ratifying it that no fresh agreement had been entered into after the company's incorporation, that there was no note or memorandum of the contract as required by the Statute of Frauds, and that, if there were a binding contract, Mr. Glass had waived his rights under it by concurring in the acts resulting in the agreement to transfer to the Dunlop Company, which rendered the performance by the company of the contract with him impossible Held by the Full Court of Victoria that a contract was effectually made between the company and Mr Glass to employ him on the terms of article 55 and was to be implied partly from the articles and partly from the conduct of the parties that Mr Shackell's letter referring to "the contract with you" was a sufficient memorandum under the Statute of Frauds, that Mr Glass's own concurrence as a director in the acts which rendered the company unable to perform its contract with him left his personal rights, in respect of the breach of contract, unaffected, and that he had never waived his rights or led the company to suppose that he would not assert them He was therefore awarded £1000 damages *Glass v The Pioneer Rubber Works of Australia Ltd XI Victorian L R* 754

Patent Sale before patent obtained Burden of proof —The Welsbach Light Company sued Mr Robert Lascelles for infringement of its patent granted in 1894 for mantles for incandescent burners He alleged (*inter alia*) that the invention had been publicly used in Victoria before the patent was obtained, and that the patent was invalid because the words "preferably uranium" in the specification were misleading It was shown that McEwan & Co had sold and the Gast Co had used mantles similar to those patented some years prior to 1894 Held by the Full Court that if a man who had invented a new means of making a new article has sold that article in the ordinary course of trade for profit before he obtains a patent for it, a patent subsequently obtained by him for the manufacture of that article is void But the substantial identity in manufature of the article patented with that previously sold must be proved by the objector in a suit for the infringement of the patent and mere conjectures formed from external resemblances will not be sufficient to shift the burden of proof and the objectors had failed to prove this identity Held further that the mistake of the patentee in expressing his preference for urania over ceria whereas subsequent experience showed that ceria produced a better illumination did not invalidate the patent and that a patentee is not to be deprived of the whole benefit of his patent for a mistake in something which he does not claim, and which is not an essential to the performance of his invention *Welsbach Light Company of Australia Ltd v Lascelles XI Victorian L R* 677

Trade Mark Resemblance Registration.—Messrs Lever Brothers are the holders of four trade-marks for soap "Sunlight Soap," "Sunlight," "Sunbeam," and "Sunshine" The Registrar of Patents granted Messrs Newton & Son's application to register as a trade-mark for their brand of soap the words "Rising Sun" Against this decision Messrs Lever Brothers appealed Some of the latter's advertisements contained a representation of the sun either rising or setting but there was no resemblance between the wrappers or the get-up of the soaps of the rival firms Held the sound of the words "Rising Sun" would not be likely to deceive, so as to mislead any ordinary person into buying "Rising Sun" soap, thinking that he was getting "Sunlight" soap The appeal was therefore dismissed *Lever Brothers v Newton and Sons IX Gaz L R* 157

Motor Car Giving warning of police trap Obstruction of police in the execution of their duty —Mr Little, having a strong sympathy with motorists and a patriotic dislike of police devices for entrapping unwary and too speedy chauffeurs observed at Croydon two constables lying in wait by the road-side with stop-watches and timing motor cars as they passed over certain measured distances, with a view to prosecuting those who drove at an unlawful rate of speed He therefore waved his hand and a newspaper and called out "Police-trap" to approaching drivers who promptly slackened speed and proceeded slowly over the measured distances The police as usual, were furious and prosecuted Mr. Little for wilfully obstructing the constables in the execution of their duty Mr Little's counsel contended that he had not obstructed the police but had merely done a perfectly lawful act in preventing people from committing offences Mr Little was not acting in concert with the drivers warned and there was no evidence that at the time he gave his warnings the cars were travelling at an unlawful rate of speed and that Mr Little prevented the police from obtaining evidence thereof The justices who heard the information dismissed the case and it was Held by Lord Alverstone C J Darling and Ridley J J that although the case was very near the line there had been no obstruction of the police in Mr Little's warning people that there was a police-trap in front, and by the two former judges that the obstruction need not be physical obstruction *Bastable v. Little* 23 *June's L R* 39

Common carrier Special contract Burden of proof —Messrs Silbert & Sharp consigned 179 cases of apples from Fremantle to Perth by the Government Railways under a special agreement that the Commissioner of Railways was not to be liable for loss except by the wilful negligence of the Commissioner or his servants On arrival of the consignment at Perth, three cases were missing The Commissioner, on a claim being made for their value, denied liability and gave no explanation as to non-delivery In an action by Messrs Silbert & Sharp against the Commissioner Held that on proof of the special contract and the non-delivery of the goods the burden of proof was on the Commissioner to show that the goods had been lost and that as he had not done so, Messrs Silbert & Sharp were entitled to judgment *VIII Western Australian L R* 77

By-law of tramway Delivering up ticket —A by-law of the Norwich Electric Tramway Company provided that "each passenger shall, when required to do so, either deliver up his ticket or pay the fare legally demandable for the distance travelled over by such passenger" Mr Green who was travelling by one of the company's cars paid his fare and received a ticket When the car became crowded he courteously gave up his seat to a lady and as often happens in such cases was thereby occasioned much inconvenience When the inspector asked him to produce his ticket he could not find it and declined to accede to the inspector's demand to "Produce your ticket, pay your fare, or leave the car" A charge was therefore laid against him for infringement of the by-laws, but the justices dismissed the information on the ground that no request had been made to Mr Green to "deliver up" his ticket Held by Lord Alverstone, C J Ridley and Darling, J J that the by-law was reasonable and applied as the demand made was equivalent to a request to the passenger to deliver up his ticket or pay his fare and that the case must go back to the justices for further consideration —*Hunt v Green* 23 *Time L R* 19.