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SUMMARY OF ENGLISH CASES.

DEYONG *v.* SHENBURN : (1946) 1 All. E.R. 226 (C.A.).

Master and servant—Loss of servant's property by theft—Master if liable.

A master merely because of the relationship which exists between a master and servant, is under no duty to take steps to insure so far as he can, that no wicked person shall have an opportunity of stealing the servant's goods. Such a duty cannot be implied from the contract of service. Accordingly when some dress belonging to an actor is stolen from the dressing room during a rehearsal the producer is not liable to the actor for the loss.

Re "L" HOTEL CO., LTD. AND LANGHAM HOTEL CO., LTD.: (1946) 1 All.E.R. 319 (Ch. D.).

Companies Act (1929), *Section* 154—*Order transferring property of a company to a new company—Form of—Essentials.*

An order vesting the property of a company in another company in perfectly general terms, transfers all the property and all the liabilities of the transferor company to the transferee company but does not operate to transfer purely personal contracts. There is transferred by a vesting order under section 154, Companies Act, only such property as could be transferred by an act *inter partes*. It is neither necessary nor desirable that there should appear in the order any such exception. The order works according to law where expressed in general terms. The various properties of the company need not be detailed in the schedule to the order.

BAINDAIL *v.* BAINDAIL : (1946) 1 All. E.R. 342 (C.A.).

Husband and Wife—Hindu who was already married to a Hindu woman in India—Subsequent marriage with a woman in England—Hindu marriage if can be disregarded by English Courts in suit for declaration of subsequent marriage a nullity.

Courts of England do for some purposes give effect to the law of the domicil as affixing or imposing a particular status on a given person. English Courts are bound to recognise an earlier Hindu marriage as an effective bar to any subsequent marriage in England.

WILSON & MEESON *v.* PICKERING : (1946) 1 All.E.R. 394 (C.A.).

Cheque—Blank cheque marked "not negotiable" entrusted to employee to be filled up with name of particular payee—Employee filling it up for different amount in name of her own creditor—Claim by drawer against payee for damages for conversion—If barred by estoppel.

A partner in a firm *W* signed on behalf of the firm a blank cheque form with the words "not negotiable" printed on it. The cheque was handed over to *X*, an employee, with instructions to fill it up for £2 and to insert the name of the Commissioners, Inland Revenue, as payees. *X* being indebted to *Y*, a stranger, in a sum of £54-4 sh., fraudulently filled in the cheque for that amount and inserted the name of *Y*, as the payee. *Y*, through her bankers, obtained payment. In an action by the firm *W*, to recover the amount from *Y*, as damages for conversion or as money had and received.

Held, *X* had no title to the cheque and *Y* could not get a better title. As the cheque was not and never intended to be negotiable the firm *W* will not be estopped and as the firm owed no duty to *Y* there is no estoppel by negligence either.

GILBERT *v.* MCKAY : (1946) 1 All. E.R. 458 (K.B.D.).

Motor cars—"Plying for hire"—Test.

The appellant kept an office with a sign on the outside "cars for hire". There were several cars belonging to him standing outside the office in the street. Various people came up, and as each got into a car and was driven away, the rank of cars moved forward. In each case the hirer had gone into the office and apparently paid his fare in the office to the proprietor or the manager of the business; that is to say, he did not make a contract with the driver.

Held, that the circumstances warranted the conclusion that the cars were plying for hire. Whether a car is plying for hire or not is essentially a question of fact which has to be decided by the application to a great extent of the rules of common sense.

SPICER *v.* SMEE : (1946) 1 All.E.R. 489 (K.B.D.).

Tort—Nuisance and negligence—Exposed electric wire in house installation causing fire—Damage to neighbour by spread of fire—Liability for.

A private nuisance arises out of a state of things on one man's property whereby his neighbour's property is exposed to danger. The duty of the owner of a house owed to a neighbour is not less than the duty owed to a member of the public using a highway. The owner is responsible for preventing his premises from getting into such a state of disrepair as to be a danger, and he ought to have in contemplation the danger to a neighbour, at least as much as the dangers to users of the highway. Accordingly where because of an exposed electric wire in a house installation a fire originated and spread to a neighbour's house and caused damage to his house and furniture the owner is liable whether on the ground of nuisance or negligence. The fact that the house was in the possession of a tenant is immaterial where the owner has let the house with a nuisance existing. Even though the negligen e was on the part of the contractor employed to carry out the installation work the owner did not cease to be liable for the nuisance. Liability for a nuisance may exist quite independently of negligence. In negligence a plaintiff must prove a duty to take care but not so in nuisance.

VICTOR BATTERY CO. *v.* CURRYS : (1946) 1 All.E.R. 519 (Ch.D.).

Companies Act (1929), *section* 45—*Scope—Debenture-holder with knowledge that money raised by company was to be used mostly for assisting another to purchase its own shares—Debenture, if void.*

Section 45 of the Companies Act (1929) (which provides :—(1) . . . . . it shall not be lawful for a company to give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company . . . . . (3). If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding £ 100), contains no indication of any intention to avoid the security to which it refers, or to punish the lender. The section treats the security as valid and proceeds to punish the borrowing company on the footing that the security provided was and remains valid. Accordingly even where a debenture-holder knows that the borrowing company is, by means of the debenture giving financial assistance to any person in connection with the purchase of its own shares, the debenture does not become invalid.

R. *v.* LEONARD HOLMES : (1946) 1 All.E.R. 524 (C.C.A.).

Crimes—Murder—Husband deliberately killing wife on her confession of having committed adultery—If entitled to plead provocation mitigating the offence—Test of provocation.

It cannot be too widely known that a person who, after absence for some reason, such as service, either suspects already, or discovers on his return, that his wife has been unfaithful during his absence, is not on that account, even if she confesses the adultery, a person who may use lethal weapons upon his wife, and if that violence should result in her death, claim to have suffered such provocation as would reduce the crime from murder to manslaughter. If a husband suddenly hearing from his wife that she has committed adultery, and he having had no idea of such a thing before, were thereupon to kill his wife, it might be manslaughter. The test is whether that which provoked the retaliation was such as would deprive a reasonable man of his self-control and induce him to act hastily in the way in which the man accused in fact acted.

JORDAN *v.* LIMMER AND TRINIDAD LAKE ASHPHALT CO., LTD : (1946) 1 All. E.R. 527 (K.B.D.).

Tort—Personal injuries—Damages for—Assessment—Loss of earnings—Income-tax which would have been payable if to be deducted from damages.

Where a person claims loss of earnings as special damages for personal injuries which prevented his earning his wages, the well-established practice of ignoring the income-tax which would have been payable in respect of the wages cannot be interfered with.

BOOK REVIEWS.

BACKGROUND TO INDIAN LAW, by Right Honourable Sir George Rankin, 1946. Published by the Cambridge University Press. Price 12sh. 6 d. net.

The East India Company came to India as traders but stayed to build an empire. One of the early problems to command their attention was the law to be applied to the inhabitants of territories gradually passing under their control. It was not a case of colonisation of unoccupied places; nor was it a case of the indigenous inhabitants having no civilised laws of their own. English law as such could not automatically intrude as if into a vacuum. The Hindu and Muhammadan systems of law were not, however, complete. They provided only for a small part of the cases which must arise in every community in the modern sense. There were vast interstices to be filled. There were also communities other than Hindus and Muhammadans. Christian evangelical enterprise was on and the Indian Christian community was rapidly increasing in numbers. Business contacts with Englishmen and outsiders had given rise to new problems. The picture of British Indian law of the present day vividly contrasts not merely with the beginnings in 1772 when the English law had no place but also with the outlook of Parliament in 1781. In that year Parliament had declared that even in the city of Calcutta, which was practically an English settlement, all contracts and personal dealings between party and party were to be determined in the case of Muhammadans and Hindus by their own personal laws. To day on the other hand in all these cases it is the Indian Contract Act, which has adopted for the most part the principles of English law, that governs all such cases and in the case of all communities as well. How did this remarkable transformation happen? To quote Sir George Rankin 'the contrast between outlook and result is often due to the wisdom of experience and it profits to notice what the difference is and how the intervening history accounts for it'. The present volume provides in a short compass that account. Sir George Rankin states in the Preface that the book is not designed as a manual of Indian law but only as an introduction to the Indian codes. And what a brilliant introduction it affords and what an unbiassed approach it presents!

The Indian codes represent the labours of four different law commissions. The first was set up under the Charter Act of 1833; the second under the Charter Act of 1853; the third in 1861 and the fourth in 1879. Distinguished names, Macaulay, Maine, Fitzjames Stephen, Romilly, Justice Willes and others have at different periods and at different stages been associated with the preparation of the codes. The fairly long interval of time that often marked the preparation of a particular code and its final enactment was the result of clashing ideologies and a struggle for control regarding the final shape to be given to the laws between the Secretary of State with his home advisers on the one hand and the men on the spot, the Legislative Council, on the other. Starting with the charter granted by Charles II in 1661, authorising for the first time, the exercise of judicial powers by the East India Company within their factories, every Parliamentary legislation bearing on the laws to be applied to or fashioned for the people of India is carefully noticed by the author and the evolution and history of each of the enactments operating throughout India like the Penal Code, the two Procedure Codes, the Indian Succession Act, the Contract Act, the Evidence Act, etc., are clearly traced and succinctly set out. Incidentally it is interesting to know how the reforming zeal of Macaulay made him visualise an immediate codification of the Hindu and Muhammadan systems of law as a practicable and desirable proposition. Sir George Rankin's shrewd comment is that codification then would have stereotyped and petrified the law giving statutory authority to anachronisms, that it would have been fashioned from incomplete and imperfect materials and that it would have been codification by men with no knowledge of the respective systems. Sir George adds that such codification at the present time particularly if it is *pedatim et gradatim*, and by a careful choice of subjects would not be objectionable. There will be complete agreement with Sir George Rankin's assessment that the placing of the Hindu and Muhammadan laws on the same footing in Regulation II of 1772 despite some centuries of Muslim rule was an act of enlightened policy, and that the influence of the common law in India is due not so much to a reception as to a process of codification on a grand scale not merely giving form to pre-existing rules but also providing rules where previously there were none. The book is of absorbing interest right through and should be in the hands of every student of law.