

GENERAL CORRESPONDENCE.

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TO THE EDITORS OF THE CANADA LAW JOURNAL.
Privileged Communications—a curious case.

MESSRS. EDITORS—I cut out from a newspaper a curious decision just given in the courts of the State of New York, respecting mercantile agency companies. The case comes under the law relating to privileged communications. Under this head of the law of evidence there have been, as you know, in recent times some sharp debates and discussions among legal men and in courts. It has been attempted (especially in Ireland) to lay down the doctrine, that what a person may disclose in the confessional to a Roman Catholic priest is *sacred* or *privileged*. English and American courts have generally (I think almost uniformly) refused to allow this privilege, that the confessional is not a place in which a man can confess a crime, and yet keep the priest's lips forever sealed. We know that courts hold that there are various privileged communications, and privileged speeches. Such for instance as the admissions of a client to his attorney, and the fair account that a master may give of the character of his former servant to one enquiring about him or her. We know that telegraphic communications may be privileged either by law or under peculiar circumstances. We know that the speeches of counsel at the bar, of members of Parliament, and of a witness in giving evidence in courts, as well as information given to the executive on complaints, are generally, unless in extreme cases, privileged. The formation of mercantile agencies is of very recent date, and I have not before noticed any case, in which the question of how far written or verbal communications to a mercantile agency, concerning a firm or a person, if slanderous or tending to injure it or him, if false, would be actionable. Here is the case to which I refer:

THE FIRM OF DUN, BARLOW & Co., known as Dun, Wiman & Co. in Canada, gave information to an enquirer in regard to another person, stating that the latter was in bad business odour, being the companion of counterfeiter, a dangerous customer, &c. The man found out the authors of the character so given to him, brought a suit for slander, but was non-suited in a New York city court, on the ground that the communication was privileged. The plaintiff took his case to the Supreme Court, when the judgment was sustained. It being of importance to business men, a portion

of the judge's decision may be quoted:—"I cannot concede that, in the large population of a crowded city, and in a mercantile community where false representations, fraud, dishonesty and insolvency are easily concealed, and but imperfectly known, or known to but few when detected—where it is easy for strangers to practice upon the unwary or unsuspecting—a business is to be characterized as unworthy which aims only to give correct information to those whose interest entitles them to seek it wherever it may be had."

One can easily conceive a case where a private individual or a firm might be greatly injured, perhaps ruined in a pecuniary point of view, by a secret enemy giving information which after all is false, concerning him or it. I cannot see why in such a case the injured individual should not have a remedy, or why any such circumstances should be privileged. I knew a recent case where "A." a trader, had been in poor even bankrupt circumstances. The above mercantile agency kept his name on the list of doubtful cases long after he had settled his difficulty, and he could not get a note discounted in consequence. A professional man was employed to get the company to set the thing right. Is "B." who slanders "C." by giving false information to the above mercantile agency, such for instance as that he had been charged with embezzlement or obtaining goods under false pretences, or perhaps making a fraudulent sale of all his goods—to go free—and "C." be without legal remedy simply because a mercantile agency company registers it in a Secret Book, seen in all parts of Canada and the United States? "B." goes to New York or to Montreal, and every reader of the secret books of the mercantile agency look on him with suspicion. He knows not the reason unless he too is in the secret.

An agent of this company may *negligently* or dishonestly give a false account of a man's position and seriously injure his business, and will the law give no remedy? I trust this is not the law in Canada.

There are maxims in the common law which ought not to be trampled on or forgotten. Such as "*sic utere tuum ut non alienum.*" The mercantile agency may be useful, but because it is so, it should be careful to know facts—to ascertain the truth, before it publishes anything; otherwise pay damages for its mistakes. Every injury to an innocent man should have a legal remedy.

October 22ad, 1868.

JUSTITIA.