TODD v. DUN WIMAN ET AL.

Libel—Mercantile agencies—Privilege.

The defendants, Dun Wiman & Co., the proprietors of a mercantile agency, wrote to the defendant C., requesting him to advise them confidentially of the standing and responsibility for credit of the plaintiff, stating that he claimed to have been burglarized and to have lost $1200 to $1600; asking if this were so, for full particulars, and was there not something wrong? The defendant replied that he had made inquiries and found that the general opinion was that the plaintiff was not robbed at all, and what had been done he had done himself; at all events if he were robbed it was of not more than $200 or $300; that circumstances were against him, still he could not say. The defendants, Dun Wiman & Co., subsequently issued a printed circular or notification sheet, in which after the plaintiff's name were the words "if interested, inquire at office." This was published and circulated amongst the defendant's customers in Canada and the United States, some 800, whether they had any interest in the affairs of the plaintiff or not, not more than three or four having any interest. The notification sheet also contained the following: "The words, 'if interested inquire at the office,' inserted opposite names on this sheet, do not imply that the information we have is unfavourable. On the contrary it may not unfrequently happen that our last report is of a favourable character; but subscribers are referred to our office, because, in justice to them, the parties *reported*, and to ourselves, the information can only be properly conveyed to those entitled to receive it by the full report as we have it on our record." The words complained of, namely: "If interested, inquire at the office" were proved to have the effect of injuring the plaintiff. At the trial no attempt was made by C. to prove that the statements made in his letters were true, or that he made inquiry and found the general opinion to be as stated. In an action of libel the jury found for the plaintiff.

Held, that the words charged were clearly libellous, and there was no privilege; for, as regards Dun Wiman & Co., the court was governed by *Lemay* v. *Chamberlain*, 10 O. R. 638, and the explanatory statement did not affect the matter; and as to C., his failure to prove the truth of the statement, or his belief therein, deprived him of any privilege.

Ritchie, Q.C., and *McGillivray* (of Uxbridge), for the plaintiff.

Osler, Q. C., and *Lash*, Q. C., for the defendants.

MCCASKELL v. MCCASKELL.

Rent charge, rent service or rent seck—Appointment.

On 1st December, 1870, A. M. by deed conveyed certain lands to his grandsons, W. M. and D. M., as tenants in common; and on the same day an agreement was made between W. M. and D. M. and A. M., whereby W. M. and D. M. agreed to pay the following sums of money and fulfil the written agreement, namely, that W. M. and D. M. should thenceforward support their mother, M. M., the plaintiff, and furnish her with reasonable, suitable and comfortable board, lodging, and clothing, and medical attendance when required at all times when necessary during the remainder of her natural life; and should treat her at all times with proper respect and regard, and maintain her in proper manner; and, if in the event of any disagreement arising between the said W. M. and D. M. and their mother, so that she would be obliged to leave the said premises, then, they should only be obliged to pay her $55 a year in lieu of board, lodging and clothing and attendance; and that the said payment should be recovered by suit at law if not paid her when due; and that it was thereby agreed and understood that the said covenants payments and annuities should thenceforth be chargeable against the said lands so conveyed as aforesaid. The plaintiff was no party to the agreement. On 4th October, 1872, the defendant W. M., for a nominal consideration of $1,000, conveyed his undivided half interest to the plaintiff; but of which she had no knowledge. Subsequently on 1st March, 1877, the plaintiff reconveyed the same to W. M.

Held, that the agreement did not create a rent charge, as no power of distress was conferred if a rent service or rent seck there would be a right of distress; but if neither but a covenant charged on land performance of it would be decreed; that upon the conveyance by W. M. to the plaintiff, the whole charge was not extinguished but an apportion-