

trial of a preliminary issue directed by an Order in Chambers ; but leave is necessary for an appeal from an order of a Divisional Court affirming an order in Chambers, where the appellant is the same party who appealed to the Divisional Court, and the order appealed from was pronounced after, although the appeal was taken and heard before the coming into force of the Act of 1895.

*C. D. Scott*, for the plaintiff.

*W. H. Blake*, for the defendants.

FERGUSON, J.]

[Oct. 19.

JOHNSTON *v.* HENDERSON.

*Auctioneer—Conversion of goods—Chattel mortgagee.*

In an action for the wrongful conversion of goods brought by a chattel mortgagee against auctioneers, it appeared that the defendants, at the instance of the mortgagor, though in the name of another, sold the goods in the usual way of auctioneers' sales, under the hammer, at the house of the mortgagor, and gave possession to the purchasers, excepting some articles that were too heavy for immediate removal, professing to have dominion over the goods, and to pass the property and give possession to the purchasers.

*Held*, upon the evidence, that the chattel mortgage was, as between the mortgagor and the mortgagee, at the time of the sale by the defendants, in full force, and the plaintiff was the owner of the goods to the extent of the amount necessary to satisfy the unpaid balance owing to him, as against the mortgagor, or any mere wrong-doer, not being, or claiming under, a creditor of the mortgagor, or a subsequent purchaser in good faith ; and that the defendants were liable for the conversion of the goods.

*Cochrane v. Rymill*, 27 W. R. 776, 40 L.T.N.S. 744, followed.

*National Bank v. Rymill*, 44 L.T.N.S. 768, and *Barker v. Furlong*, (1891) 2 Ch. 172, distinguished.

*E. B. Ryckman* and *A. T. Kirkpatrick*, for the plaintiff.

*Charles Macdonald*, for the defendants.

BOYD, C.]

[Oct. 19.

ROBINSON *v.* DUN.

*Libel—Mercantile agency—Confidential report—Privilege—Reasonable care.*

In an action of libel brought by a trader against the conductors of a mercantile agency, it appeared that the libellous matter was sent to a few subscribers on their personal application. The information on which the statement complained of was founded in reality related to another trader of the same name as the plaintiff.

*Held*, that the publishing of the information was a matter of qualified privilege, but that the want of reasonable care in collecting the information was evidence of malice which destroyed the privilege.

*Todd v. Dun*, 15 A.R. 85, followed.

*Cossett v. Dun*, 18 S.C.R. 222, discussed.

*Gibbons*, Q.C., for the plaintiff.

*W. Nesbitt*, and *R. McKay*, for the defendants.