

SUING UPON AN ADVERTISEMENT OF AN AUCTION.

which was heard on appeal by Lord Selborne, C., and Mellish, L.J.

The judgment of Lord Selborne, in which Mellish, L.J., concurred, traces the development of the rule as to the compulsory disclosure of communications between solicitor and client, and shows the successive steps by which the law has reached a broad and reasonable footing. In *Bolton v. Corporation of Liverpool*, 1 My & K. 88, *Hughes v. Biddulph*, 4 Russ. 190, and some other cases about the same date, the doctrine of protection was expressed in terms which had a tendency to narrow its scope. But in these cases a decision on the general question was not required; and the subsequent case of *Pearse v. Pearse*, 1 De G. & Sm. 12, clearly showed that the tide had turned. The case of *Minet v. Morgan*, coming at the end of a series of authorities tending in the same direction, seems to place beyond question the doctrine that whether the solicitor or the client be the party interrogated it is sufficient for the protection of communications between the party or his predecessor in title and his solicitor acting in a professional capacity, and that it is not necessary that they should be made either during or relating to an actual or even an expected litigation. Thus a simple principle has superseded a number of partial rules and arbitrary distinctions.—*Solicitors' Journal*.

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A novel attempt was made in *Harris v. Nickerson*, 21 W. R. 635, L. R. 8 Q. B. 286, to fix an auctioneer with liability for withdrawing from a sale certain goods which had been included in the advertisement. It is difficult to see how the plaintiff in that case could have possibly recovered damages, for he had bought other things at the sale, so that the expenses of attending the sale, in respect of which he claimed, were not incurred solely for the sake of the articles withdrawn. But on principle the action was really without grounds. To support it it must have been held that an auctioneer, by advertising goods for sale contracts with any one and every one who comes to the sale to sell them. To have held so would certainly have been inconsistent in principle with *Spencer v. Harding*, 19 W. R. 48, L. R. 5 C. P. 561, where the

defendant who had offered goods for sale by tender was held not to have contracted with the highest bidder to sell to him. In the case of *Harris v. Nickerson*, however, there was even less to bring the plaintiff into privity with the defendant than in *Spencer v. Harding*, for in the last named case the plaintiff had at least made a bid, and so had brought himself into a position of apparent analogy with that of a person who furnishes information in answer to an advertisement offering a reward, as in *Williams v. Carwardine*, 4 B. & Ad. 621, and *Turner v. Walker*, 14 W. R. 793, L. R. 2 Q. B. 301. Apparent analogy, we say, because there were wanting in *Spencer v. Harding* any such words of promise as are contained in these advertisements. Nor are there ever any such words of promise in an auctioneer's advertisement. The case was argued, however, on the authority of *Warlow v. Harrison*, 7 W. R. 133, 1 E. & E. 295; but there again, the goods had actually been put up for sale and the plaintiff had made a bid—in fact, he was the highest bidder; and if only it could be held that actually putting up the goods for sale and taking bids created an implied contract to sell to the highest bidder, that contract had been made, and the plaintiff was in the same position as the person who answers an advertisement offering a reward. It is very difficult to say that *Warlow v. Harrison* (if it is good law) does not establish that under such circumstances a contract may be implied. Blackburn J., indeed, distinguished that case from *Harris v. Nickerson*, on the ground that there the sale was advertised as “without reserve.” This amounted to a representation that the auctioneer was instructed to sell “without reserve,” and if that representation was fraudulent (of which the buying in would be good evidence, as the employment of a puffer at a sale by auction is evidence of fraud: *Green v. Baverstock*, 14 C. B. N. S. 204, 11 W. R. C. L. Dig. 12), the auctioneer would no doubt be liable. But in *Warlow v. Harrison* the auctioneer was sued in contract, and it is difficult to see how an advertisement that there will be a sale *without reserve* can make a contract, if an advertisement that there will be a sale does not. The distinction seems to be rather that which we have pointed out, namely, that in *War-*