

the shipper, the man shipping the goods, would so understand it, I say, if it were myself, certainly I should not. I should find that the defects which were to render the ship unseaworthy were only to be excepted in certain conditions—that is, if reasonable means had been taken to provide against them. That is how I should read it as a shipper, although the shipowner would not. It appears to me that the vice of Walton, J.'s, admirable judgment is that he has rather lost sight of what would be reasonably plain to the shipper. I quite agree with the principle on which the Lord Chancellor and my noble and learned friend Lord Macnaghten have proceeded in deciding this case. I agree that this bill of lading did not employ plain terms and relieve the shipowner from liability in the case of unseaworthiness—I mean by “plain terms” terms sufficiently plain to the shipper for him to understand it—he would not understand it in the sense contended for by Mr Carver.

Judgment appealed from affirmed, and appeal dismissed.

Counsel for the Appellants—Carver, K.C.—Leek. Agents—Lowless & Company, Solicitors.

Counsel for the Respondent—Hamilton, K.C.—Hill. Agents—Waltons, Johnson, Bubb, & Whatton, Solicitors.

HOUSE OF LORDS.

Friday, March 3.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten, James of Hereford, and Lindley.)

CHAPMAN AND OTHERS v. PERKINS.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Will—Construction—Intention—Clause of Forfeiture—Forfeiture of Interest in Event of Certain Marriage—Marriage Occurring during Testator's Lifetime.

A testator by his will conferred certain interests in his estate upon his children, providing however that on the occurrence of certain enumerated events, *e.g.*, the bankruptcy of a child, or if a child contracted a marriage within a degree of kindred indicated in the will, he or she should forfeit his or her interest under the will.

During the lifetime of the testator a daughter contracted a marriage within the prohibited degree.

Held that, as regarded the forbidden marriages, the provision as to forfeiture was meant by the testator only to apply to a marriage entered into after his death, and that consequently the daughter had not forfeited her interest.

Edward Chapman by his will dated March 24, 1881, devised and bequeathed his real and personal estate to trustees, to be held

by them upon trusts for the benefit of his wife and children. The will contained the following clauses:—“And I declare that if any son or daughter of mine shall do or suffer any act whether by way of alienation, charge, or otherwise, and including any act under any statutes of bankruptcy or for the relief of insolvent debtors for the time being, by reason or means whereof any part or share of him or her in any income or capital of my said estate to or of which he or she shall not have already become entitled in possession or be for the time being actually entitled to receipt, shall or but for the payment clause would become wholly or in part vested in or payable to any other person or persons, or if he or she shall contract any marriage forbidden by me as hereinafter expressed, then and in any such case his or her share, right, title, and interest of, in, and to my said trust estate and the income thereof shall thenceforth cease and determine, and my said trust estate shall thenceforth go and be held in such manner as the same would have been held if he or she had died before me without leaving any child or children at my death. And I declare that the marriages forbidden by me are in the case of son or daughter marrying with a person of any degree of kindred unless more remote than third cousin, and also in the case of a daughter's marriage contracted without the previous written consent of the trustees or trustee for the time being of this my will, or if more than two, of a majority of them.”

The testator died on December 23, 1902.

On November 9, 1886, one of the testator's daughters married her first cousin.

The Court of Appeal (WILLIAMS and STIRLING, L.JJ., *diss.* COZENS-HARDY, L.J., *rev.* a decision of KEKEWICH, J.) held that as regarded the forbidden marriages, the testator's intention was that forfeiture should only take effect in the case of a marriage entered into after the testator's death, and that consequently the daughter had not forfeited her interest.

On appeal to the House of Lords their Lordships gave the following opinions:—

LORD CHANCELLOR (HALSBURY)—I do not propose to go over this elaborate argument again. It appears to me that the decision of Vaughan Williams and Stirling, L.JJ., is perfectly right. There is an intention on the part of the testator, to my mind overwhelmingly established upon the words of the will itself, and I decline to go beyond that. The argument, from the words used with reference to bankruptcy, seems to me to be disposed of by this consideration. In the cases to which reference has been made learned judges have used some such phrase as that they “have reluctantly arrived at the conclusion,” or that it was “a non-natural construction of the words,” but, further than that, in the cases referring to bankruptcy, there was a desire on the part of the testator that his property with which he was dealing should not go to strangers, but should go to his children, and a decided intention that the

thing which should take away his property from the intended object of his bounty should be something happening during his own lifetime, and therefore they have no reference to the subject-matter with which we are dealing. To my mind the reasoning of Vaughan Williams and Stirling, L.J.J., as to the intention of the testator is perfectly satisfactory. I think their judgment quite right, and I move your Lordships that it be affirmed, and the appeal dismissed.

LORD MACNAGHTEN—I am of the same opinion. I agree with the majority of the Court of Appeal, and I think that in this particular will the marriages forbidden are marriages taking place after the testator's death.

LORD JAMES OF HEREFORD and LORD LINDLEY concurred.

Appeal dismissed.

Counsel for the Appellants—Levett, K.C.—Iselin. Agent—John F. Child, Solicitor.

Counsel for the Respondent—Upjohn, K.C.—E. Clayton—W. A. Russell. Agents—Ward, Perks, & M'Kay, Solicitors.

HOUSE OF LORDS.

Friday, March 24.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten, James of Hereford, and Lindley.)

OGDENS LIMITED *v.* NELSON.
OGDENS LIMITED *v.* TELFORD.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Contract—Construction—Breach—Contract whereby Seller Promises Buyer Bonus for next Four Years—Seller meanwhile Disposes of Business—Damages.

A, a company of wholesale tobacco manufacturers, issued a circular to retail dealers offering them a share in a bonus on condition of their signing an agreement, *inter alia*, not to deal with B Limited. B Limited, in response, issued a circular offering to customers buying direct from them a share in a bonus distribution of "our entire net profits and two hundred thousand pounds per year for the next four years." The offer was accepted by C and D in a letter recapitulating the terms of the offer and stating that in consideration of it they agreed not to sign any agreement with A or any agreement with any company which might prevent them dealing with B Limited. Before the four years expired B Limited sold their business to A.

Held that B Limited, having put an end to an agreement which was to continue for four years, were liable in damages to C and D for breach of con-

tract to the extent of the bonus which the latter would have received had B Limited continued their business.

The Imperial Tobacco Company of Great Britain and Ireland, Limited, offered to various tobacco dealers, including the respondents in this appeal Messrs Nelson and Telford, in consideration of their selling the goods of the company and undertaking not to buy any goods from Ogdens Limited and certain other companies, a share in a bonus of £50,000 and in certain expected profits of the company.

Ogdens Limited, in order to outbid the Imperial Tobacco Company, made the following offer by letter to a large number of tobacco merchants, including Messrs Nelson and Telford:—"Bonus Distribution—Our entire net profits and two hundred thousand pounds per year for the next four years. Commencing April 2, 1902, we will for the next four years distribute to such of our customers in the United Kingdom as purchase direct from us our entire net profits on the goods sold by us in the United Kingdom. In addition to the above we will, commencing April 2, 1902, for the next four years distribute to such of our customers in the United Kingdom as purchase direct from us the sum of two hundred thousand pounds per year. Distribution of net profits will be made as soon after April 2, 1903, and annually thereafter, as the accounts can be audited, and will be in proportion to the purchases made during the year. Distribution as to the two hundred thousand pounds per year will be made every three months, the first distribution to take place as soon after July 2, 1902, as accounts can be audited, and will be in proportion to the purchases during the three months period. To participate in this offer we do not ask you to boycott the goods of any other manufacturers."

Messrs Nelson and Telford accepted the offer by letter in the following terms:—"I beg to inform you that I have not signed the agreement with the Imperial Tobacco Company, Limited, dated March 1902, and in consideration of participating in your bonus distribution of the entire net profits on goods sold by you in the United Kingdom and two hundred thousand pounds per year for the next four years as set out in your particulars, I hereby agree not to sign it or any similar agreement with the Imperial Tobacco Company, Limited, or any other company or firm, containing any conditions which would prevent me from buying, displaying, selling, or distributing your goods or the goods of any other manufacturer, and I also undertake to continue to buy, display, and sell your goods."

In accordance with the bargain so made, Messrs Nelson and Telford dealt with Ogdens Limited, and in July 1902 received their proportion of bonus up to that date. On September 27, 1902, Ogdens Limited sold their undertaking, including the goodwill of their business in Great Britain, to the Imperial Tobacco Company. Messrs Nelson and Telford were paid their share of bonus down to the date of sale, and were thereafter informed by letter from Ogdens