cannot be one of the objects of the company (*Bisgood* v. *Henderson's Transvaal Estates, Ltd.*[10]), and it may be that a provision in the memorandum as to the application of the proceeds of such a disposal to persons other than shareholders is ineffective, and is overriden by the Companies Act, 1948, ss. 265 and 302.[11]

The other question of policy is whether it is satisfactory that directors should be required by law to manage the company's affairs solely with a view to the financial benefit of the shareholders. Are there not other interests which deserve recognition, such as those of the consumer in being able to purchase goods at a reasonable price, even though the company, by reason of patents, exclusive access to supplies, or control of the market, could exact a higher price? It would, surely, be more in accordance with modern views about the functions of business enterprises in society to relieve directors from this myopia which the law forces on them. In Germany directors of public companies are required by company legislation to take into account the interests of the shareholders, the employees of the company and the public as a whole, and they are empowered to use the company's funds, to a reasonable extent, in providing benefits for employees and the public. Why not in Great Britain too?

R. R. PENNINGTON.

MERCANTILE AGENTS AND CAR REGISTRATION BOOKS

Pearson v. *Rose & Young, Ltd.*,[1] which has aroused so much criticism,[2] has now been followed by the Court of Appeal in *Stadium Finance, Ltd.* v. *Robbins*.[3] It is to be regretted that the Court of Appeal, in following the *Pearson* case, gave no indication of a realisation of the unsatisfactory nature of that decision and that some of their reasoning even goes beyond the judgments in the *Pearson* case.

In the *Stadium* case the defendant, Robbins, wishing to sell his car, left it in the showroom of a car-dealer named Palmer. Palmer was given no authority by Robbins to sell the car, the arrangement being merely that Palmer should report inquiries to Robbins, who wished to control the sale of the car himself. Robbins took the

[10] [1908] 1 Ch. 743.

[11] On the other hand, if a company seeks a licence under the Companies Act, 1948, s. 19, to dispense with the word "limited" as part of its name, the Board of Trade requires its memorandum to provide that on liquidation its assets shall be transferred to another company or body with like objects, and such a provision is generally regarded as effective. In *Re Cuban Land Co.* [1921] 2 Ch. 147 the court held valid a provision in debentures that the debenture holders should, on winding up, be entitled to one-third of the assets of the company left after its debts had been paid, but, of course, they claimed this share as creditors, not as beneficiaries.

[1] [1951] 1 K.B. 275 (C.A.).

[2] See, *e.g.*, (1951) 67 L.Q.R., pp. 3–7; Hanbury, *Principles of Agency*, 2nd ed., pp. 111–113; Powell, *The Law of Agency*, 2nd ed., pp. 228–229, 231–232; Fridman, *The Law of Agency*, pp. 188–189.

[3] [1962] 3 W.L.R. 453; [1962] 2 All E.R. 633.

ignition key of the car away with him, but, without realising it, he accidentally left the registration book in the locked glove compartment of the dash-board. Duplicate keys being readily available in garages, Palmer opened the glove compartment, found the registration book, and did not hesitate to use it; shortly afterwards Palmer " sold " the car to his salesman, the sale being effected through a hire-purchase agreement made by the plaintiff finance company with the salesman. The salesman appears to have been in good faith, and when he took delivery of the car he saw the registration book and an ignition key for the car was given to him. The first instalment due under the hire-purchase agreement not being paid, the plaintiffs sought to repossess the car in accordance with the terms of the agreement, and, on finding that Robbins had himself retaken the car, sued for its recovery or its value and damages for its detention. The Court of Appeal unanimously thought that a car without an ignition key constituted " goods " within the meaning of section 2 (1) of the Factors Act, 1889, and this part of their judgments is, of course, to be welcomed. They nevertheless held that the plaintiff company had not obtained a good title under that Act.

A purchaser of goods from a mercantile agent can only obtain a good title under section 2 (1) of the 1889 Act if (1) the mercantile agent is, with the consent of the owner, in possession of the goods or the documents of title thereto, (2) the sale was made by the mercantile agent when he was acting in the ordinary course of business of a mercantile agent, and (3) the purchaser was acting in good faith and had no notice that the mercantile agent had no authority to make the sale. On the third point, it was argued that a sale of a car without production of its registration book is sufficient to put the purchaser on inquiry,[4] that the finance company made no inquiry, that had they done so they would have ascertained that Palmer had no authority to sell, and that not having inquired they must be deemed to have had constructive notice of Palmer's lack of authority to sell. In consequence of their views on the first two requirements, it was not necessary for the Court of Appeal to decide this point, but they indicated that, had it been necessary to do so, they would have dismissed this argument, because Palmer, by opening the glove compartment, had in fact possessed himself of the registration book and so would, if the finance company had asked for it, have been able to produce it; there would not, therefore, in the circumstances, have been anything to put the finance company on inquiry. This view, if one may say so, seems eminently satisfactory. The importance of the case, however, rests on the first two points.

Willmer L.J. held that the finance company had failed to obtain

[4] *Bishopsgate Motor Finance Corporation, Ltd.* v. *Transport Brakes, Ltd.* [1949] 1 K.B. 322, 338; *Central Newbury Car Auctions, Ltd.* v. *Unity Finance, Ltd.* [1957] 1 Q.B. 371, 382.

a good title because the first requirement had not been satisfied. The requirement that the goods must be in the possession of the mercantile agent with the consent of the owner has been interpreted as meaning that the owner must consent to the mercantile agent having possession in his capacity of mercantile agent and not in some other capacity (*e.g.*, that of repairer).[5] Accepting this interpretation, Willmer L.J. produced the argument that the failure of Robbins to hand over the ignition key to Palmer showed that he was not consenting to Palmer having possession of the car in his capacity of mercantile agent: "The absence of the key is important . . . because (1) its absence was symbolic of the owner's intention to retain a *jus disponendi*, and (2) the key was needed in order to open the glove compartment and give delivery of the registration book. . . . I do not think that Palmer can be said ever to have been in possession of the registration book with the consent of the defendant. Without either the key or the registration book Palmer was not . . . in possession of the car in his capacity of mercantile agent."[6] It is true that the absence of the ignition key showed that Robbins intended to control the sale himself and that he was not giving Palmer any authority to dispose of the car, but it does not follow from this that he was not consenting to Palmer having possession of the car as a mercantile agent. Surely the whole point of Robbins giving possession of the car to Palmer was that the latter, as a car dealer (and mercantile agent) was much better placed to discover what offers would be made for the car than he himself was, and this shows clearly that Robbins consented to Palmer's having possession in his capacity of car dealer (and mercantile agent). To accept the suggestion that, merely because an owner, in giving possession of goods to a mercantile agent, shows an intention that the latter shall not dispose of them, he is not consenting to the latter's having possession as a mercantile agent, would stultify the Factors Act and would deny the authority of *Turner* v. *Sampson*.[7] The suggestion is even contradicted by the judgment on which Willmer L.J. relied, for Denning L.J. in the *Pearson* case said: "The owner must consent to the agent having them for a purpose which is in some way or other connected with his business as a mercantile agent. *It may not actually be for sale. It may be for display or to get offers, or merely to put the goods in his showroom*, but there must be a consent to something of that kind before the owner can be deprived of his goods."[8] It seems,

[5] *Staffs Motor Guarantee, Ltd.* v. *British Wagon Co., Ltd.* [1934] 2 K.B. 313; *Pearson* v. *Rose & Young, Ltd.* [1951] 1 K.B. 275, 288.

[6] [1962] 3 W.L.R. at p. 460.

[7] (1911) 27 T.L.R. 200. Fridman, *op. cit.*, p. 187, states that "delivery of goods to someone who would normally be a mercantile agent, but without giving the agent any one of the kinds of authority in s. 1 (1) of the Act, will not amount to giving the agent the required possession." But he reads more than is warranted into the cases he cites, and he ignores *Turner* v. *Sampson*.

[8] [1951] 1 K.B. 275, 288. Italics supplied.

therefore, with respect, that Willmer L.J.'s reasoning is contrary to both principle and authority. As such, it is to be hoped that it will not find favour in subsequent cases.

As regards the third requirement of the section, all three judges held that the sale by Palmer to the finance company was not in the ordinary course of business of a mercantile agent, because, as the registration book had been accidentally left in the locked glove compartment, Palmer had not obtained possession of it with the consent of Robbins. Palmer could only obtain possession of the registration book by unlawful means, namely, by breaking open the glove compartment. "Having regard to the decision in *Pearson's* case, therefore, Palmer was never in a position to sell the car in the ordinary course of business." [9] Ormerod L.J. said: "A car was put in the possession of Palmer which had no ignition key and no registration book easily available. . . . A car does not appear to be capable of being used as a motor-car if the registration book and ignition key are missing, and I fail to see how the sale of a car deficient in these two important respects can be in the ordinary course of business of a mercantile agent." [10] Having regard to the doctrine of precedent, the decision in the *Stadium* case on this point is not surprising, but nevertheless it must be stated that the reasoning in the *Pearson* and *Stadium* cases seems unsatisfactory and the practical consequences unfortunate.

The question whether a mercantile agent has obtained a car with the owner's consent has obviously to be decided in the light of the circumstances at the time that the goods are obtained, but the question whether a subsequent disposition by him is in the ordinary course of business of a mercantile agent surely depends on the circumstances surrounding the disposition, and for this purpose it is irrelevant whether the car or its registration book has been obtained without the owner's consent. At the time of the sale to the finance company, the ignition key and registration book were available for the hirer, and it should be immaterial that the car was deficient with regard to the ignition key and registration book at the time that the mercantile agent obtained it; it was not deficient in these respects when he sold it. The confusion in the reasoning of the Court of Appeal results from its failure to keep distinct the section's requirements with regard to (1) the owner's consent and (2) a disposition in the ordinary course of business of a mercantile agent.

However this may be, the consequence of the *Pearson* and *Stadium* cases is that a purchaser of a secondhand car (together with its registration book) from a dealer in circumstances which on the face of things seem to indicate that the sale was in the ordinary course of business, runs the serious risk that he may obtain no title to the car, because it may turn out that the dealer did not obtain

[9] [1962] 3 W.L.R. at p. 461.
[10] [1962] 3 W.L.R. at pp. 457–458. See also Danckwerts L.J. at p. 462.

the registration book with the owner's consent. This is an unfortunate limitation on the operation of the Factors Act. It is to be regretted that the court, which in interpreting " consent of the owner " declined to apply " the artificial distinctions of the criminal law to a commercial transaction," [11] has given its authority to an artificial construction of another requirement of the section. One cannot but live in hope that the House of Lords may soon have an opportunity to review the *Pearson* and *Stadium* cases.

J. A. HORNBY.

CONTEMPT OF COURT AND THE VICTIMISATION OF WITNESSES

CRIMINAL contempt of court has been described by an American judge as " inordinately sweeping and vague " and as the offence with " the most ill-defined and elastic contours in our law." [1] Judges in all common law countries have recognised that the jurisdiction " of committing for contempt being practically arbitrary and unlimited should be most jealously and carefully watched," [2] but have at the same time not hesitated to manipulate their summary power to protect " the individual right of every citizen to an independent administration of justice free from influence or intimidation by improper conduct of any sort." [3] And there are many sorts of such improper conduct. The English law of criminal contempt is a classic wilderness of single instances, particularly in view of the fact that appeals against convictions were not permitted until the Administration of Justice Act, 1960.

In *Attorney-General* v. *Butterworth*,[4] the first important appeal in contempt under the legislation of 1960, the Court of Appeal has ruled upon an aspect of what might be termed " contingent contempt," [5] that is, contempt after all proceedings in some particular litigation have terminated. The court vigorously asserted the jurisdiction of the superior courts to punish summarily any attempt to victimise or otherwise punish a witness in any case, even though proceedings have finally ended in that case. In the view of all three judges, such conduct would tend to deter persons from testifying frankly in any future proceedings and thus constitute " an

11 *Folkes* v. *King* [1923] 1 K.B. 297, 305; *Pearson* v. *Rose & Young, Ltd.* [1951] 1 K.B. 275.

1 *Green* v. *United States*, 356 U.S. 165, 200 (1958), *per* Black J.

2 *Re Clements and Costa Rica Republic* v. *Erlanger* (1877) 46 L.J.Ch. 375, 383 (C.A.), *per* Jessel M.R. See also *Dallas* v. *Ledger* (1888) 4 T.L.R. 432, 433; *Hunt* v. *Clarke* (1889) 58 L.J.Q.B. 490, 493; *Re Payne* [1896] 1 Q.B. 577, 580; *Dunn* v. *Bevan* [1922] 1 Ch. 276, 285; *Gaskell and Chambers, Ltd.* v. *Hudson, Dodsworth and Co.* [1936] 2 K.B. 595, 603.

3 J. C. McRuer, " Criminal Contempt of Court Procedure: A Protection to the Rights of the Individual " (1952) 30 Can.Bar Rev. 225, 227.

4 [1962] 3 W.L.R. 819; [1962] 3 All E.R. 326 (Lord Denning M.R., Donovan L.J., Pearson L.J.).

5 This phrase was used by Keating J. in *Metzler* v. *Gounod* (1874) 30 L.T. 264, and adopted by Holmes J. in *Craig* v. *Hecht*, 263 U.S. 255, 280–282 (1923).