against the railway company the defenders sought to have the correspondence produced.

Held that the letters were not protected by confidentiality and must be produced.

In an action by a member of a trade union (appellant) against a railway company for wrongful dismissal, an order was made upon him for discovery of certain letters between himself and the secretary of the union. These had been written to satisfy the union authorities that the circumstances entitled the appellant to receive legal assistance in terms of the union rules. This order was affirmed by the Court of Appeal (VAUGHAN WILLIAMS, BUCKLEY, and KENNEDY, L.JJ.)

The trade union member appealed.

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—I cannot see any reasonable room for doubting that this case was rightly decided in the Court of Appeal, nor can I see how that decision puts at a disadvantage those who are obliged to co-operate in order to obtain legal advice or assistance. The question arises as follows:—The appellant Jones, a servant of the respondent railway company, had a dispute with his official superiors which ended in his dismissal. He thought himself aggrieved and brought this action. He was a member of a trade union upon terms which entitled him to a variety of benefits, among others being the right to receive legal assistance in case of unjust dismissal. In such a case he was bound by the rules of the union to give full particulars to the head office, and the sanction of the executive committee or of the general secretary was needed before a solicitor was engaged. In the present case certain letters passed between Jones and the officials of the union containing information about his dismissal. They were written before the action was commenced in order to satisfy the union authorities that they ought to sanction the employment of a solicitor, and to furnish information by which the solicitor should be enabled to conduct the action which the workman contemplated and desired. The question is whether or not these documents are privileged from discovery. The rule on this branch of the law of discovery is that in order to enable to confide unreservedly in his legal advisers, all communications between solicitor and client are protected. The rule was expressed by James, L.J., in the case of *Anderson* v. *Bank of British Columbia* (2 Ch. Div. 645) as follows:—"The old rule"—meaning the rule which still exists—"was that every document in the possession of a party must be produced if it was material or relevant to the cause, unless it was covered by some established privilege. It was established that communications that had passed directly or indirectly between a man and his solicitor were privileged, and the privilege extended no further." Both client and solicitor may act through an agent, and therefore communications to or through an agent are within the privilege. But if the communications are made to him as a person who has to act himself in confidence upon them, then the privilege is gone. This is because the principle which protects communications between solicitor and client only no longer applies. The document is in existence relating to the matter in dispute which is communicated to someone who is not a solicitor, nor a mere *alter ego* of the solicitor. I would merely add that disclosure is constantly required of letters between partners, or between a firm and its agent. It is rare in litigation that communications are confined to letters passing between a solicitor and a client, and every large concern, whether a railway company or a trade union, or whatever it may be, that must needs conduct business by correspondence, is amenable to the same rule—a rule in itself wholesome, for it favours the placing before a court of justice of all the material circumstances that may lead to a just decision.

LORD MACNAGHTEN—I am of the same opinion, and I think it a very clear case.

LORD JAMES OF HEREFORD and LORD SHAW concurred.

Appeal dismissed.

Counsel for Appellant—Sir R. Finlay, K.C.—N. Craig—E. Browne. Agents—Pattinson & Brewer, Solicitors.

Counsel for Respondents—Scott Fox, K.C.—Lowenthal. Agent—Dixon H. Davies, Solicitor.

HOUSE OF LORDS.

Friday, April 2, 1909.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords Macnaghten, Collins, and Gorell.)

POSTMASTER-GENERAL *v.* NATIONAL TELEPHONE COMPANY, LIMITED.

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

Postmaster-General—Monopoly—Telegraph—Telephone—Private Telephone—Telegraph Act 1869 (32 *and* 33 *Vict. cap.* 73), *sec.* 5.

From the monopoly of the Postmaster-General are excepted telegraph and telephone lines, "A" to "A," between houses and offices of the same owner, under sec. 5 of the Telegraph Act 1869, but not "A" to "B" lines, between establishments of different owners. Electric signals without telephones fall within the monopoly.

In a Special Case stated to determine the extent of the Postmaster-General's monopoly in respect of telephones, judgment in favour of the Postmaster-General

was pronounced by SWINFEN-EADY, J., and reversed by the Court of Appeal (COZENS-HARDY, M.R., MOULTON and BUCKLEY, L.JJ.)

The Postmaster-General appealed, and the case was twice heard because of Lord Robertson's death on 2nd February.

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—With the utmost respect for the Court of Appeal I am unable to accept their view. This appeal affords an admirable illustration of the danger to which great interests in this country are exposed by the slovenly manner in which even public Acts of Parliament are expressed. It is still worse with private Acts. In the present case the Government bought the telegraphs and acquired a monopoly of telegraphic, which includes telephonic, communication about forty years ago for a great sum of money; and to-day your Lordships have to consider how far that monopoly extends, not in regard to trivial or frivolous invasions, but in regard to claims so far-reaching that if admitted they would go a considerable way towards destroying the value of the monopoly itself, and so serious as to have been admitted by the Court of Appeal. Speaking generally, not with complete precision, the National Telephone Company allege that the statutory monopoly of the Postmaster-General is limited by section 5 of the Telegraph Act 1869 so that any person (corporate or individual) may without licence use his own private wire to communicate with any other persons, however numerous, provided that the message relates to his own business, and is transmitted without charge. On the other hand, the Postmaster-General says that such a private wire can only be used by its owner to transmit messages to and from himself and his own servants and agents, except for occasional gratuitous use by others of an exceptional kind. The point is conveniently, though roughly, expressed in the question, May a person use his private wire to send "A" to "A" messages (that is, from himself to himself), or can he also use it to send "A" to "B" messages? Which of these views is sound must depend upon the true meaning of two paragraphs in section 5 of the Act of 1869 which undoubtedly create exceptions to the monopoly granted by the preceding section. I propose to consider each paragraph separately. The first paragraph excepts from the monopoly "Telegrams in respect of the transmission of which no charge is made, transmitted by a telegraph maintained or used solely for private use, and relating to the business or private affairs of the owner thereof." Here are laid down definite conditions under which alone this exception applies. No charge must be made by the owner of the "telegraph" for transmitting a message. The message must relate to his own business, though, of course, it may also relate to the business of other people. And, finally, the telegraph must be maintained or used solely for the owner's private use. The singular is employed. It is one owner, not several—one personality, whether corporate or not. I think that this means that the owner alone can use the telegraph. It cannot be said to be used solely for his private use if the wire is at the owner's office at one end, and at the other end, or at a multitude of places throughout its length, it is at the offices of other people also, who are not his agents or servants. In that case it is used not solely for the owner's private use but also for that of others. The main argument of the respondents was, that if that be the sound construction, there was no need for saying that no charge should be made, for no one would charge himself. I cannot appreciate this argument. A message may be sent by A to his own agent relating to his own business, and it may also relate to B's business, and B may be willing to pay something for getting the message sent and the answer communicated to him. That is the reason for prohibiting any charge from being made. I come now to the second paragraph, which excepts "Telegrams transmitted by a telegraph maintained for the private use of a corporation, company, or person, and in respect of which, or of the collection, receipt, and transmission or delivery of which, no money or valuable consideration shall be or promised to be made or given." This paragraph is differently worded because it deals with a different case. Here there is no condition that the message must relate to the owner's business. Here also it is not imperative that the "telegraph" shall be "maintained or used" solely for the owner's private use. It is enough that it is maintained for the private use of the corporation, company, or person, and no charge made. It seems to me that the design was to allow a third person to use the telegraph and to use it for business in which the corporation, company, or person had no concern, provided that the message was sent gratuitously and that the telegraph was maintained for the private use of the corporation, company, or person. In other words, if the real purpose of maintaining the telegraph was for that private use, outside persons might be allowed to use it for their own affairs, always on terms of no charge being made. The Attorney-General described this as a casual and gratuitous use. I think that he is right. If the practice were frequent, then the privilege would be destroyed, for then it might truly be said that the wire was not maintained for the private use of the corporation, company, or person only, but for the use of other persons also. The language of both paragraphs is clumsy, and the two are not mutually exclusive. But in substance the latter is a qualification of the earlier, intended to allow a certain degree of latitude. There may be an occasional invasion of the monopoly, but it must not be a practice. This concludes the case in favour of the appellant. I need not, therefore, deal with the Attorney-General's second contention, that under the agreement the National Telephone Company

are bound to pay the disputed royalties, quite apart from the statute. In my opinion the agreement in this particular merely licenses what would without licence be prohibited by the statute. A point was made that the transmission of a signal, as described in the second schedule, does not amount to the transmission of a telegram within the Act of 1869. I think the point untenable in view of the definition clause.

EARL OF HALSBURY—I entirely concur with the judgment of the Lord Chancellor and with the reasons on which it is founded.

LORDS MACNAGHTEN, COLLINS, and GORELL concurred.

Judgment appealed from reversed.

Counsel for Appellant—Attorney-General (Sir W. Robson, K.C.)—Solicitor-General (Sir S. Evans, K.C.)—Casserley. Agent—Solicitor to the Post Office.

Counsel for Respondents—Sir R. Finlay, K.C.—Danckwerts, K.C.—Gaine. Agent—William E. Hart, Solicitor.

PRIVY COUNCIL.

Tuesday, May 11, 1909.

(*Present*—The Right Hons. Lords Macnaghten, Atkinson, and Collins, and Sir Arthur Wilson.)

OWNERS OF THE "MAORI KING" *v.* WARREN.

(ON APPEAL FROM THE SUPREME COURT FOR CHINA AND COREA.)

Ship—Merchant Shipping Act 1894 (57 *and* 58 *Vict. c.* 60), *sec.* 76—*Forfeiture—Tribunal—Court Outside His Majesty's Dominions—Jurisdiction.*

A ship which becomes subject to forfeiture under the Merchant Shipping Act 1894, sec. 69, may, by sec. 76, be adjudged forfeited by . . . . "any Colonial Court of Admiralty or Vice-Admiralty Court in Her Majesty's Dominions." A British Court is established, by treaty, at Shanghai, outside His Majesty's Dominions.

Held that such a Court has no jurisdiction in forfeiture under the statute.

A ship was declared forfeited under the Merchant Shipping Act 1894 (57 and 58 Vict. c. 60), sec. 69, by the Supreme Court for China and Corea, sitting at Shanghai. The jurisdiction set up for this purpose by sec. 76 of the Act extends to . . . "any Colonial Court of Admiralty or Vice-Admiralty Court in Her Majesty's Dominions." Shanghai is outside British territory.

The owners of the ship appealed on the ground of no jurisdiction.

Their Lordships' considered judgment was delivered by

SIR ARTHUR WILSON—This is an appeal from a judgment and decree of His Majesty's Supreme Court for China and Corea at Shanghai, which declared the steamship "Maori King" to be forfeited for improperly carrying British colours. Several grounds of objection to that judgment and decree were urged upon the argument of the appeal. The principal ground of objection went to the jurisdiction of the Court; and as, in the opinion of their Lordships, that objection is sufficient to dispose of the appeal, they deem it unnecessary to consider the other points argued. The facts, so far as they are material for the present purpose, can be briefly stated—The "Maori King" was purchased in March 1906 in the name of one Dow, and registered at Shanghai in Dow's name; but he executed a declaration of trust in favour of a Russian firm, Ginsburg & Co., who have been found to be the real owners. On the 24th January 1908 the respondent, His Majesty's Consul-General at Shanghai, filed two petitions, founded on two writs, dated respectively the 4th and 6th January 1906, which he had caused to be issued against the appellants. Of these petitions the second is the more material. It was based upon secs. 69 and 76 of the Merchant Shipping Act 1894. It stated that the plaintiff, as consular officer within the meaning of sec. 76, had seized and detained the ship as liable to forfeiture under sec. 69, for having used the British flag without authority to do so; and the petition asked (amongst other things) for a declaration and judgment that the ship had become forfeited to His Majesty. Certain defences were raised which it is not necessary to examine on the present occasion. On the 23rd April 1908 a decree was passed declaring the forfeiture of the ship as prayed. That is the decree appealed against. The sections which it is important to notice for the present purpose are as follows:— [*His Lordship read the sections.*] The question of jurisdiction which has been raised is this—The jurisdiction to entertain and deal with the petitions before the Supreme Court, if it possesses that jurisdiction, depends upon sec. 76 just cited. It is contended, however, for the present appellants that that section confers authority upon no court excepting those within the dominions of the Crown, whereas the Court at Shanghai is not within British territory. That contention on the part of the appellants, in their Lordships' opinion, must prevail, for the language of the section is express, and there appears to their Lordships to be no other statutory authority extending the jurisdiction under this section to the Shanghai Court. For the foregoing reasons their Lordships are of opinion that the appeal should prevail. They will humbly advise His Majesty that the decree of the 23rd April 1908 should be set aside, and the respondent's petitions dismissed without costs. There will be no order as to the costs of the appeal.

Appeal sustained.