Privileged Communications

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beyond the scope of corporate authority. The Indiana statute makes no express provision for such an action, but the court probably will continue to follow its former decisions. If such injunctions were not allowed, the only remedy of the non-assenting shareholder would be in a quo-warranto proceeding to forfeit the charter of the corporation, or enjoin the exercise of unauthorized powers.

The preface of the Indiana General Corporation Act Annotated states that: "The new Acts are thought to contain the best features of recent legislation concerning corporations throughout the country, and should clarify the law governing corporations in Indiana . . . ." This appears to be an overstatement so far as ultra vires is concerned.

P.C.M.

EVIDENCE PRIVILEGED COMMUNICATIONS

The New York City council appointed a committee to investigate charges of negligence and maladministration at the city-controlled Lincoln Hospital. At the committee hearing, the hospital medical superintendent withheld confidential case record information on the grounds that the New York Civil Practices act prohibited a physician from disclosing any information acquired in attending a patient. Held, the statutory privilege included examination before legislative committees. New York City Council v. Goldwater, 31 N. E. (2d) 31. (N. Y. 1940).

At common law, patient-physician communications were not privileged from disclosure in judicial proceedings. However, statutes have changed the rule in the majority of the states. 8 Wigmore, EVIDENCE (3d ed. 1939) § 2380. In the principal case the court by a liberal interpretation applied the privilege to non-judicial proceedings. It felt the decision was necessary to carry out the policy of the statute. Buffalo Loan, Trust & Safe-Deposit Co. v. Knights of Templar & Masonic Mutual Aid Ass'n, 126 N. Y. 450, 454, 27 N. E. 942, 943 (1891). Section 354 of the Civil Practices Act indicates that the privilege applies to any examination of a physician as a witness. This was strengthened by dicta in a previous New York case to the effect that witnesses before the commissioner of accounts were entitled to all the privileges and protection extended by law to witnesses in judicial proceedings. Matter of Herschfield v. Hanley, 228 N. Y. 346, 127 N. E. 252 (1920).

A dissent advocated restricting the statute to its "primary purpose." Buffalo Loan, Trust and Safe-Deposit Co. v. Knights Templar and

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25 Compare statutes cited supra note 19.

26 The drafters of the Uniform Business Corp. Act expect this position to be taken by the courts. 9 Uniform Laws Ann. (Perm. ed. 1932) 58.

27 Columbian Athletic Club v. State, 143 Ind. 98, 40 N. E. 914 (1895).
NOTES AND COMMENTS

Masonic Mut. Aid Ass'n, 126 N. Y. 450, 454, 27 N. E. 942, 943 (1891). But see Atchinson, T. and S. F. R. Co. v. Reesman, 60 F. 370, 373 (1894). Without the ability to find the facts, legislative investigations are of little help in preparing intelligent statutes. The privilege shields from inquiry the very abuse concerning which the public is entitled to full information. See People ex rel Wood v. Lacombe, 99 N. Y. 43, 49, 1 N. E. 599, 600 (1855); City Bank F. T. Co. v. N.Y. C. R. R. Co., 253 N. Y. 49, 57, 170 N. E. 489, 492 (1930).

J.E.K.

INSURANCE

COVERAGE OF AUTO THEFT POLICY

In two recent cases an automobile was taken without the consent of the owner by a person in temporary possession, but without the intent to keep it permanently. Each automobile was insured against theft. The Indiana Supreme Court denied recovery on the insurance policy for damages to the car, but a Federal Circuit Court of Appeals allowed recovery.1 The Indiana court followed the weight of authority and defined theft as synonymous with larceny, requiring the common law intent to appropriate another's property wholly and permanently.2 The Federal court allowed recovery, holding that an appropriation inconsistent with the property right of the person from whom it was taken was sufficient.

The general rule in construing insurance contracts is that if the language is ambiguous or reasonably open to two constructions, the one most favorable to the insured will be adopted.3 The application of the rule would include "taking without consent" cases within the coverage of theft policies.4 Where state statutes make vehicle taking a felony but do not require an intent to permanently deprive, courts generally consider such taking unprotected by theft policies.5 These cases follow the