the view taken in the instant case and in *Bliley v. West*, supra, represents the view which the Supreme Court will probably adopt if the question is brought before it, since there is, at least, a violation of the spirit of the Fourteenth Amendment, and the indication of *Nixon v. Condon*, supra, is that the Court will not be prevented from protecting so substantial a right as the franchise of Negro voters by a matter of form.

W. ROBERT MING, JR.

Contracts—Indemnity—Disclosure of Confidential Information—Damages—[England].—Defendant, a subscriber to a mercantile agency (plaintiff) had agreed he would not reveal supplied information and that he would indemnify the plaintiff in respect to any loss or damage which it might suffer or incur directly or indirectly from the breach of this agreement. Held, agreement to indemnify was not void as against public policy, but if there was a disclosure leading to damages for libel, without special damage, nominal damages only against the disclosure were recoverable. *Bradstreet's British Ltd. v. Mitchell*, Ch. (1933) 102 L.J.K.B. 34, 48 T.L.R. 670 (1932).

In the United States it is generally held that confidential communications of information to its customers by a mercantile agency, bona fide, and without malice or recklessness are privileged. *Eber v. Dun*, 12 Fed. 526, 4 McCrary 160 (U.S. 1882); *Bradstreet v. Gill*, 72 Tex. 115, 9 S.W. 753 (1888); Cooley, Torts (4th ed.), 557, § 159. England contra. *MacIntosh v. Dun*, L.R. (1908) A.C. 390. Therefore, it is unlikely that this case would arise in the United States since the information was given bona fide, without malice or recklessness.

A contract to indemnify against the consequences of publishing a libel is a contract to indemnify against a wrongful and illegal act and is therefore against public policy and void. *Arnold v. Clifford*, 2 Sumn. 238 (U.S. 1835); *Smith & Son v. Clinton*, 25 L.T.R. 34 (1906). But if a libel is not necessarily contemplated the contract is valid. *Jewett Pub. Co. v. Butler*, 159 Mass. 517, 34 N.E. 1087 (1893). In the principal case the contract was not to indemnify against the result of a libel published, but was a contract not to disclose information with an indemnity in respect to loss or damage due to any such disclosure, and, as such, is not contrary to public policy. Communications made by a principal to an agent or by the agent to a principal relative to subject matter of employment, and containing information or giving directions relative thereto, are privileged, although they contain defamatory matter concerning a third person. *Bolinger v. Germania Life Ins. Co.*, 132 Iowa 123, 109 N.W. 463 (1906); see Cooley, Torts (4th ed.), 555, § 159. An express term in an agent’s contract of employment prohibiting him from disclosing evidence or information obtained is not, therefore, invalid, and in the absence of an express term, such a term may be implied. *Weld Blundell v. Stephens*, H.L. (1920) 89 L.J.K.B. 705, (1920) A.C. 956. Commented on in 19 Col. L. Rev. 249 (1919); 33 Harv. L. Rev. 106 (1919); 40 Can. L. T. 58 (1920); 68 Univ. Pa. L. Rev. 194 (1920); 54 Ir. L. T. 194 (1920); 37 So. Afr. L. J. 440 (1920); 6 Corn. L. Quar. 336 (1921); 69 Univ. Pa. L. Rev. 185 (1921).

It has been suggested that the agreement in the principal case might be wholly void because of uncertainty for the reason that the indemnity called for is against loss or damage incurred directly or indirectly by reason of the breach of confidence. 174 L. T. 219 (1932). The decisions seem to bear this out. See 13 C.J., Contracts (1917), 266, § 59.
RECENT CASES

But where the contract is held valid, as here, the policy of the English courts in requiring a high standard of accuracy in the information which is gathered and disseminated by a mercantile agency would be weakened by imposing upon the subscriber the burden of full indemnity, since the agency would lose an incentive for a high degree of care. The decision, therefore, would seem correct. Cf. 6 Aust. L. Jour. 272 (1932).

BENJAMIN ORDOWER

Contracts—Offer and Acceptance—Silence as Acceptance—[Federal].—The defendant in Texas retained the plaintiff in New York to prosecute a claim on a contingent fee basis. The claim was for $144,000, and the fee was to be twenty-five per cent of the amount recovered. While that suit was pending the now defendant attempted a compromise through a local attorney and telegraphed plaintiff, “must know immediately what will be your fee in the event we accept settlement offered us. Answer quick.” Plaintiff specified $12,500 immediately; defendant made no reply. Four months later the local attorney informed the plaintiff that the compromise had been effected (cash $50,000, securities $94,000, note $66,000), whereupon plaintiff had the pending suit dismissed. In defence of this suit for $12,500, it was asserted that since there was no reply to plaintiff’s offer to receive that much in settlement, the offer was never accepted. Both sides moved for a directed verdict. Held, that plaintiff recover $12,500. Laredo National Bank v. Gordon, 61 F. (2d) 906 (C.C.A. 5th 1932), certiorari pending.

The majority of jurisdictions hold that the client must respond in damages for the dismissal without cause of the attorney employed for a specific purpose or period. New York dissents as to employment for a specific purpose and holds the attorney may recover only quantum meruit for his services. Martin v. Camp, 219 N.Y. 170, 114 N.E. 46, L.R.A. 1917F, 402 (1916), and cases cited therein; Greenberg v. Remick & Co. 230 N.Y. 70, 129 N.E. 211 (1920). Orthodox notions of contract support the majority view, while the minority ruling rests on a matter of policy predicated upon the relation of the parties and the desire to avoid litigation by permitting compromises.

Whether the client has the “privilege” or only a “power” to dismiss the attorney without cause, there is no reason why the parties cannot mutually rescind the original contract, contingent upon a successful compromise, and agree upon a definite compensation for the attorney. The court in the principal case decided that the defendant’s failure to reply to the plaintiff’s telegram constituted the acceptance of an offer looking to such an agreement. Though generally mere silence will create no contractual obligation, “it is at least clear as a matter of law that silence and total inaction of the defendant may operate as assent to the formation of the contract.” Williston, Contracts (1920), 168, § 91. See also Contracts Restatement (1932), § 72. It should be determined from the particular facts of each case whether it has so operated or not. There are several facts in this case which justify the court’s holding. First, the fee set by the attorney was undoubtedly very fair, considering the amount obtained in the settlement and, deducing from that, what the plaintiff might have got had he prosecuted the suit to recovery. Second, the very terms of the telegram would seem to justify the plaintiff in believing, reasonably, that if defendant was not satisfied with the compensation specified he would object within a reasonable length of time. Contracts Restatement (1932), § 72c. Third, the attorney-client relation existing between the parties...