

the words of the statement of claim, "the plaintiff . . . contemplated or intended to put an end to her life."

This statement with the innuendo mentioned was said to involve a criminal charge.

The learned Judge, after referring to authorities, and to secs. 10, 269, and 270 of the Criminal Code, said that the words alleged to be libellous did not involve a criminal charge against the plaintiff under sec. 269 or sec. 270. Assuming the innuendo found as pleaded, the utmost they attributed to her was a contemplation or intention of committing suicide. "The mere intention to commit a misdemeanour is not criminal. Some act is required:" Parke, B., in *Eagleton's Case* (1855), 1 Dears. 515, at p. 538; Lord Reading in *Rex v. Robinson*, [1915] 2 K.B. 342, at p. 348. Contemplation is less than intention; and, the distinction between felony and misdemeanour being abolished by sec. 14 of the Code, a statement that the plaintiff intended to commit suicide no more involves a criminal charge than a statement that she intended to commit what in Baron Parke's time was called a misdemeanour.

The alleged libel not involving a criminal charge, the plaintiff was not entitled to the advantages afforded by sub-sec. (2) of sec. 12, and the order appealed from could not be set aside.

Motion dismissed without costs.

LATCHFORD, J.

NOVEMBER 2ND, 1918.

HESS v. GREENWAY.

Negligence—Lease of Part of Building—Injury to Goods of Lessee from Bursting of Steam-pipes—Cause of Bursting—Duty of Landlord—Duty of Tenant Undertaking Heating of Building—Findings of Fact of Trial Judge.

Action for damages for injury to the plaintiff's linotype machines contained in part of a building sublet to the plaintiff by the defendant Greenway, who had a lease from the owner of the building, the defendant Elliott. The plaintiff alleged that the damage was caused by the negligence of the defendants or some or one of them.

The action was tried without a jury at Toronto.

T. N. Phelan, for the plaintiff.

G. H. Gilday, for the defendant Greenway.

William Proudfoot, K.C., for the defendant Elliott.

H. J. Scott, K.C., for the defendants the Sinclair & Valentine Company.