upon an equality with the rest of the population.

We shall on a future occasion refer to a very interesting decision in Lower Canada, as to the validity of a marriage between a Christian and an Indian woman, a pagan, according to the rites or custom of the tribe to which she belonged.

SELECTIONS.

THE LAW OF LIBEL.

By far the most important branch of the law of libel is that which relates to publications defamatory of indididuals. Blasphemous or obscene books are comparatively rare, and the harm they are likely to do is generally remote and diffused. But words or writing affecting men's reputations are necessarily of daily occurrence, and the injury inflicted by them is obviously in modern times one of the gravest of all injuries. Unfortunately, however, though the law as to libels of a public character is unsatisfactory, the law of defamation is incomparably more so: in fact there is perhaps no single branch of our law in so utterly indefensible a condition; it is theoretically absurd, and practically mischievous.

In every libel, as we have seen, three elements may have to be considered, the form of the publication, the character of the matter published, and the motive with which it is published. In dealing with libels injurious to the public only, such as blasphemy for instance, the law, with a correct instinct, looks mainly to substance and motive, and pays very little regard to form. And yet if there be any case in which it might be permissible to lay stress upon form, and distinguish broadly between words that perish and writings that endure, it is this case, for the liklihood of injury is materially affected by the form. But defamation of individuals is very different. The character of the charges made, the degree of publicity given to them, the number of times they are repeated, may all affect both the moral guilt of the slanderer and the injury to the slandered. But men's lives are short, and their memories shorter, the causes of a prejudice are soon forgotten, though the prejudice survives, and if a man's reputation has suffered it makes no difference to him whether the attack which injured him is preserved in the back files of a newspaper or not. Yet, strangely and perversely, it is just when it has to deal with defamation of individuals that the law makes everything of form, and treats all questions of substance as quite subsidiary.

The first broad rule of law on the subject is one founded entirely upon form. A defamatory publication (and anything tending to injure the reputation of another may be said to be defamatory) is in general both an indictable offence and an actionable wrong. But if the same matter be published by word of mouth it is in no case a criminal offence, nor is it, except in a few instances, to be mentioned shortly, any ground for a civil action.

The rule that written libels are indictable and oral slanders are not, is universal, yet it is utterly unreasonable. The ground on which libels are treated as offences against the State, is, in the words of Blackstone, because "every libel has a tendency to the breach of the peace, by provoking the person libelled to break it." But in the present day, at least, a libel published in a tangible form is exactly the kind of defamation which is not likely to lead, and in fact does not lead to breaches of the peace, for there are other and better remedies open. An attack in a book, or phamphlet, or newspaper, may be met with the same weapons. It is the whispered slander which never takes a tangible form, and therefore can never be contradicted, that really leads to horsewhippings.

The remaining branch of the rule, which says that oral slander shall not be actionable is, and always has been, subject to certain exceptions, founded either upon the substance of the slander, or the consequences arising from it. The exceptions which make defamatory words actionable on the ground of their substance, are, to adopt the order of Bacon's Abridgment, "words which import the charge of a crime" (and this includes anything which would subject a man to penal consequences); "words which are disgraceful to a person in an office;" and words which are disgraceful to a person of a profession or trade," by imputing to him incapacity or impropriety in the way of his business. The other exception is founded upon consequences, and provides that a person slandered may maintain an action for the slander if he has suffered any special damage in consequence of it. This last exception might seem at first sight to remove the hardship of the general rule it qualifies, by giving an action to any one really injured by a slander; but, as we shall see, it has unfortunately been rendered comparatively useles by the narrow view taken of the meaning of special damage.

The exceptions founded on the substance of the slander—imputation of crime, disease, official or professional misconduct—are even more arbitrary than the general rule itself. The difficulty, at first sight, is to imagine on what possible ground these particular slanders were chosen and all others omitted. But it appears to us that in our old books traces may be found which show that the earlier judges had a tolerably reasonable principle more or less distinctly present in their minds when they decided the cases from which the above rules are drawn, that they regarded such cases as that of a contagious disorder as only examples of a wider law, and never meant *expressio unius* to be *exclusio alterius*. Anyone who goes through the cases collected in such a book as Rolle's Abridgement will, we think, have no doubt that the older judges considered defamation to be actionable, if it either in fact did, or in the natural course of things must, injure the person defamed, by affecting him in purse or per-