

which has been rejected was a full answer to the demand, and I don't think it ought to have been rejected. It was irregularly filed, it is true, but this was only a question of costs, and the Court ought to have granted respondent leave to file it immediately. The statute of the 35 Vic. cap. 3, sec. 6, is clear on this subject: "No minister who has performed any marriage ceremony under the authority of a license issued under this act, shall be subject to any action or liability, for damages or otherwise, by reason of there being any legal impediment to the marriage, unless, at the time when he performed such ceremony, he was aware of the existence of such impediment." But even without that section I should be inclined to think that a license, where there was no collusion or fraud, would be a good justification.

It has been said that we could not look at the evidence of Doak, or at the license, because it was rejected from the record, and that there was no appeal from the judgment rejecting it. We don't think that the appellant can gain anything by the severance of the question of the validity of this portion of the evidence from the main question. If the Judge in the Court below had said he did not attach any weight to this evidence, and that he decided the case without taking it into consideration, we certainly should not have been prevented from treating it differently.

There was a question raised at the argument of what is denied by the general issue, and what is admitted by a special plea, but I don't think the matter comes up.

I would confirm, and I concur somewhat reluctantly, in the order as to costs of this appeal.

The judgment in appeal is *motivé* as follows: "The Court, etc.

"Considering that there is no evidence of the special damage alleged by the said appellant;

"Considering that it does not appear that the said respondent was aware, at the time of the marriage in question, that the said Emelie Couture, daughter of appellant, had not reached the age of majority;

"Considering that there was a marriage license duly signed, authorizing the said respondent to marry the said Emelie Couture and one George Samuel Cleveland;

"Considering that the existence of the said

license was duly pleaded, but that it was not regularly produced and filed;

"Considering that the said appellant did not object to the said irregularity in filing the said license, but examined several witnesses subsequent to the said irregular filing, and that the said license ought not to have been dismissed by the judgment of the Court below without notice of the motion to reject the said license, so that the said respondent might have moved for leave to file the same regularly;

"But considering that there is no error in the dispositive of the judgment appealed from, to wit, the judgment rendered by the Superior Court for Lower Canada, sitting at Sherbrooke, in the District of St. Francis, on the 27th of March, 1880, doth confirm said judgment without costs."

Judgment confirmed without costs.

*L. C. Belanger* for appellant.

*Ives, Brown & Merry* for respondent.

*W. H. Kerr, Q. C.*, counsel.

#### RECENT ENGLISH DECISIONS.

*Insurance—Fire Policy—Subrogation*:—After the date of a contract for the sale of a house which was insured against fire, and before completion of the purchase, the house was damaged by fire, and the insurance company, in ignorance of the contract, paid the vendors for the damage done. The purchase was subsequently completed, the vendors receiving the full amount of the purchase money, and also retaining the moneys paid to them by the insurance company. On an action by the insurance company to recover the moneys paid by them to the vendors, held, that the insurance company were not entitled to recover, the principle applicable to such a case being that of subrogation. (Q. B. Div. April 4, 1882.)—*Castelain v. Preston*.

#### GENERAL NOTES.

ERRATUM.—On page 273, line 34, column 1, in Mr. Justice Ramsay's letter, "lawyers gain by protracted legislation," should read "litigation."

Sir Fletcher Norton, whose want of courtesy was notorious, happened, while pleading before Lord Mansfield on some question of manorial right, to say, "My lord, I can illustrate the point in an instant in my own person. I myself have too little manors." We all know it, Sir Fletcher," interposed the judge with one of his blandest smiles.