

The publication of every circumstance in the private history of an individual, whether trader or not, however acquired or however injurious to his feelings, is not a proceeding which the law will countenance merely because it is true. This we admit and this we desire Trade Protection Societies to understand and to observe. But, notwithstanding, it may be advanced as an axiom that it is in general lawful to publish any true statement where the publication infers no malice either actual or constructive, and particularly if done from laudable motives. Certainly, the publication of a statement disclosed on a public register is not a violation of the rights of privacy or the disclosure of anything that ought to be concealed. It might be convenient for a person embarrassed, by concealing the fact of recorded judgments against him and of bills of sale given by him, to obtain more goods on trust. Such an one, without doubt, would pout and fume if his real commercial status were to be made known by publication or otherwise to the persons with whom he proposes to deal, and others with whom he might otherwise deal. This to him would be very annoying and excessively inconvenient; but would it not be, in a public point of view, more annoying and more inconvenient, by the suppression of facts, to enable an undeserving person to obtain credit? Surely, reason and justice are on the side of publication.

It may be said that publication would have a bad effect on the good as well as a good effect on the bad. It may be said that a person who in a moment of financial pressure gives a confession of judgment might be ruined if it were made public—and if ruined, it may be asked, would he not have a good right of action against the publisher? To this we would reply, no! 1. Because confessions are required, for the protection of creditors, within a certain time to be filed of record, and so *pro tanto* made public. 2. Because the publication of the fact without malice is what the law terms *damnum absque injuria*. 3. Because the publisher is not in such a case answerable for the inferences drawn from his publication of a fact; for different men may draw different inferences from the same fact. 4. Because the argument *ab inconvenienti* is entirely in favor of publication, as it is better that one man should be ruined by the publication of admitted truth, than that hundreds should be ruined by the concealment of it.

The principle of publication is sanctioned by making the records public. It is only a legitimate extension of that principle to make public the information which the records afford. The publicity may be effected either by the press or otherwise, if not done from malicious motives. In every case of the kind the question is *quo animo*? If done intentionally to injure the individual named an action might

lie, but if done for the safety and security of men whose existence depends on knowing the truth, there is no ground for an action. Such is the germ of the decision of *Fleming et al v. Neaton*, 1 H. L. C. 363.

In Upper Canada at the present moment there are two companies organized, or being organized, for the purpose of giving information to mercantile men in quest of it. The leading objects of the one are to take advantage (as in Britain) of the public and legal records of the country for obtaining information of the registration of instruments through the execution of which the standing of parties may be materially affected and the interests of those dealing with them compromised, condensing such information when acquired and conveying it periodically to members of the Society. The leading objects of the other are, confidentially to convey to members information as to the standing, &c., of parties about whom inquiry is made—the information having been gathered in all manner of ways, such as espionage, eaves-dropping, and other questionable and certainly unreliable means of information.

Of the legality of the former Society we have little doubt. Of the legality of the latter, we are not free from doubt. And of this we are certain, that while the former would, at the hands of a British court and jury, receive considerable favor, the latter would receive none. The great principles of the common law all point in one direction—and that is, the safety, the security of society; in other words, the public good. No principle of law exists whereby dishonor is countenanced or disreputable practices encouraged; and if one thing could be more hateful to the law of England than another, we are convinced it would be an organized system of espionage.

LEGISLATIVE COUNCIL ELECTIONS.

In 1857 the Legislature passed an Act "to improve the mode of obtaining evidence in cases of Controverted Elections." (20 Vic., c. 23.)

It makes provision for certain preliminary proceedings, such as notice of objections to the election of the person declared elected and his answer, and then enacts that "whenever any of the parties shall be desirous of taking the evidence respecting the facts and circumstances alleged in such notice or answer, it shall be lawful for him to make application in writing to the Judge of the County Court in Upper Canada, residing or having jurisdiction in the Electoral Division or in the District in which such controverted election was held, requiring him to take the evidence, &c." (s. 4.)

The evidence taken by any such Judge is to be transmitted in the manner prescribed by the Election Petitions Act of 1851, to the Clerk of the *Legislative Assembly*, to be