Diffamation—Défense—Aggravation d'offense—Rumeurs publiques—Réponse en droit.

Jugé:—Que dans une action en dommage pour diffamation de caractère, dans laquelle la demanderesse se plaint que la défenderesse a fait circuler dans sa paroisse de calomnies propres à la ruiner dans son honneur et sa réputation, la défenderesse peut plaider que les accusations incriminées avaient notoirement cours dans la dite paroisse, et étaient répétées publiquement par diverses personnes, une réponse en droit à cette partie de la défense sera renvoyée.—*Robert* v. *de Montigny*, Loranger, J., 31 mai 1890.

Assignation—Huissier—Différents districts.

Jugé:—Qu'un bref doit être exécuté par l'huissier auquel il est adressé; qu'ainsi un bref adressé à aucun des huissiers du district de Joliette, ne peut être exécuté par un huissier du district de Montréal, à Joliette, district de Joliette. — *Laforce* v. *Landry*, Mathieu, J., 29 mai 1890.

Carte-postale—Injures—Dommages exemplaires.

Jugé:—Que l'envoi d'une carte-postale avec les mots suivants écrits dessus: "*Received the amount all right—nicely caught in your own trap—honesty is the best policy—your confidence games will work no more—you do not need a diploma—rest on your laurels, deeds go further than words—though your words of Saturday and Monday were strong enough. Au revoir,*" est une injure; et que, en l'absence d'aucun dommage réel, le défendeur doit être condamné à des dommages exemplaires. $40.00 de dommages accordées.—*O'Brien* v. *Semple*, Mathieu, J., 30 mai 1890.

FIRE INSURANCE.

(*By the late Mr. Justice Mackay.*)

CHAPTER VI.

The Conditions of the Policy.

[Continued from p. 303.]

The reporter disapproves of this ruling and he cites several cases, one the *Phœnix Ins. Co.* v. *Taylor* in Minnesota. The insurance was "on a stock of goods consisting of a general assortment of dry goods, groceries, crockery and such goods as are usually kept in a general retail store." By a printed clause keeping of gunpowder was prohibited "unless consented to in writing on the policy."

It was held that the writing controlled the printing, and that the written words would authorize the gunpowder, it being proved that it was usually kept in general retail stores. Angell § 14, 15 cited.

In a case of *Morse* v. *Buffalo F. & Mar. Ins. Co.*, in Wisconsin,[1] the insurance was on a steamer, the policy to be null if camphene, naptha, benzole, benzine, crude or refined coal or earth oils were used on the premises without written consent. Kerosene oil was used to light the cabin and saloon, and the insurers were condemned though kerozene was admitted to be refined coal or earth oil.

A man insures a building used as a distillery, but says that all distilling shall cease in ten days. He carries it on for thirty days; then a fire occurred afterwards. The insurance company was freed from liability.[2]

Ch. J. Abbott's (Lord Tenterden) judgment in *Weir* v. *Aberdein*[3] seems not to be approved by *Story*, J., in *McLanahan* v. *Univ. I. Co.*,[4] but is approved seemingly by *Kent*, Com: Vol. III. [289]. Kent says Lord Tenterden's argument is "very weighty" to the effect that a "defect cured before a loss, subsequent loss recoverable." (In marine insurance where ship was unseaworthy at first.[5])

Ch. J. Abbott supposes two anchors to be required, the vessel sails with only one. Before the loss it has gotten a second. The loss happening later, the insurers shall pay, he says.

But Story seems to say *no*, in 1 Peters, Ib. Wherein does this case differ from one of a vessel said on face of the policy to sail with 50 men; but sailing with only 46? There was breach of warranty; though it get four a month afterwards and before loss, the insurers are free. *DeHahn* v. *Hartley*. "Proper

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[1] 11 Am. Rep.

[2] Cassation, 5 Feby., 1856. Nullity was held even as to movables therein.

[3] 2 Barn. & Ald.

[4] 1 Peter's R.

[5] The contrary was judged in the privy council in a case from Quebec, 1869.