ordinary course of his business. That would be an extraordinary alteration of the law, and it would enable people to defame others to an alarming extent. None of the cases cited come up to what has been contended, or anywhere near it.

Order for new trial.

FIRE INSURANCE.

(By the late Mr. Justice Mackay.)

CHAPTER XVII.

OF SUBROGATION.

(Continued from page 220.)

§ 312. *Illustrations of subrogation.*

In England it was held that where a riotous demolition by fire had taken place and the office paid the loss to the insured even without suit, it had a right to stand in the place of the insured, and to proceed against the hundred in the name of the insured. *Mason* v. *Sainsbury*, 2 Marsh. Ins. 796, 3rd ed., was an action brought against the hundred on the 1 Geo. I, to recover satisfaction for damage sustained by the plaintiff by the demolition of his house in the riots of 1780. There was a verdict for the plaintiff, with £259 damages, subject to the opinion of the Court on a case, which stated in substance that the plaintiff had insured his house in the Hand in Hand Fire Office; that the office had paid the loss without any action being brought against them; and that this action was brought against the hundred in the plaintiff's name, and with his consent, for the benefit of the insurance office, and to reimburse them the loss they had paid. The question was, whether, as the plaintiff had already received a satisfaction, this action could now be maintained against the hundred on behalf of the insurers. It was contended, on the part of the hundred, that it was the policy of the act, besides the inducement to suppress riots, to divide the loss, and prevent the ruin of individuals; but there could be no reason of policy or justice to extend this beyond the party himself to bodies or individuals who have wilfully put themselves into this danger; that though it was true that a man, having different remedies, might pursue either, and it was no defence to the one that he might have pursued the other, yet, when he has recovered by one, he shall not afterwards seek a second satisfaction by the other; but the Court was unanimously of opinion that the office had a right in this case to recover against the hundred in the name of the insured. Lord Mansfield said: "Though the office paid without a suit, this must be considered as without prejudice; and it is, to all intents, as if it never had been paid. The question comes to this Can the owner of the house, having insured: it, come against the hundred under this Act? Who is first liable? If the hundred be first liable, still it makes no difference; if the insurers be first liable, then payment by them is a satisfaction, and the hundred is not liable. But the contrary is evident from the nature of the contract of insurance. It is an indemnity. We every day see the insured put in the place of the insurer. In abandonment it is so, and the insurer uses the name of the insured. It is an extremely clear case. The act puts the hundred in the place of the trespassers; and, on principles of policy, I am satisfied that it is to be considered as if the insurers had not paid a farthing." Mr. Justice Willes said: "I cannot distinguish this from the case of an escape. If the sheriff pays, he has his remedy over against the party. Though the hundred is not answerable criminally, yet they are not to be considered as wholly free from blame. They may have been negligent, which is partly the principle of the act." Mr. Justice Ashhurst said: "At all events the plaintiff is entitled to a verdict to the amount of the premium, having had no compensation as to that. But, on the larger ground, I am of opinion that the hundred is liable in this action for all the damage sustained by the plaintiff." Mr. Justice Buller said: "Whether this case be considered on strict or on liberal principles of insurance law, the plaintiff must recover. Strictly, no notice can be taken of anything out of the record. The contract with the office, if strictly taken, is a wager; literally, it is an indemnity. But, on the words, it is only a wager, of which third persons shall not avail themselves. It has been rightly admitted that the hundred is put in the