

*Held*, also per RIDDELL, J., that the plaintiff's contributory negligence disentitled him to recover. It was proved by evidence properly admitted that the plaintiff had agreed with the owner to keep up the gates, and while this could not be relied upon by the defendants as an estoppel, or, in itself, a perfect defence, it was cogent evidence of contributory negligence, for the plaintiff knew it was his duty to keep the gate in repair and he knew that the gate was not a safe gate, yet he deliberately put his animals into the field. He had no right to have the defective gate in the defendants' fence except under the express agreement between the owner and the defendants, and that was under the express condition of keeping the gate in proper repair. This condition he undertook to fulfill and failed, and by reason of this failure he had been damaged. Therefore the only cause of the accident was his own neglect.

*Weir*, for plaintiff. *Foster*, for defendants. *McGowan*, K. C., for third party.

Court of Appeal.] . REX v. BRINLEY. [March 14.

*Criminal law—Bigamy—Foreign divorce—Domicil—Constitutional law—Criminal Code, s. 275.*

Case reserved by the junior judge, of the County of Huron, sitting in the County Court judge's Criminal Court.

The defendant was charged with bigamy under s. 275, sub-s. 4. of the Criminal Code. He was, and had always been, a British subject, and was married in the County of Huron in 1897. In 1903, his wife left him and went to reside in Michigan. She then intended to separate from her husband and had no intention of ever returning, and thenceforth made her home in Michigan. In 1906, she obtained a divorce from the defendant in Michigan, on the ground of extreme cruelty. The defendant was not served with any notice of the divorce proceedings and took no part therein. In 1906, the defendant went to Detroit, Michigan, and went through a form of marriage with another woman before an officer duly qualified, under the laws of that State. He left Canada with intent to go through the form of marriage with her, and immediately afterwards returned with her to his residence in the Township of Goderich in Ontario. Before obtaining his marriage license in Goderich, he had obtained legal advice that the divorce decree obtained by his wife in 1906, was legal and binding, and that he was at liberty to marry again if he saw fit.