The Legal News.

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DAMAGES FOR PERSONAL INJURIES.

At pp. 105–107 of vol. 2, Legal News, will be found the report of a remarkable case, *Phillips v. South-Western Railway Co.*, in which the English High Court of Justice, Queen's Bench Division, set aside a verdict on the ground of insufficiency of damages, and the decision was affirmed by the Court of Appeal. The verdict was for $35,000, but this sum was held to be so utterly inadequate as to justify the ordering of a new trial. The plaintiff was a London physician who was so severely injured whilst travelling on the railway as to be incapacitated both mentally and physically from pursuing his profession; and, according to the medical evidence, his life must in a very short time be terminated in consequence. It was shown that his average professional income for the ten years preceding the accident was $25,000 a year. The jury were supposed to have improperly taken into account that he had a private income of $17,500 a year, as they allowed him only $35,000, which was about what he would have earned in the year and four months between the accident and the trial, in addition to the $5,000 of expenses which had been incurred before the trial took place. The new trial has resulted in a verdict for $80,000, equal to three years' income and the $5,000 expenses, and this verdict has been sustained by the Courts.

The case being one of a rare class in which juries have been held too niggardly in the award of damages, it has received a corresponding amount of attention. Sir Alex. Cockburn remarked upon the difficulty of laying down any precise rule as to the measure of damages in cases of personal injury. There are personal injuries, he said, for which no amount of pecuniary damages would afford adequate compensation, and the attempt to award full compensation might be attended with ruinous consequences to defendants. The general rule was held to have been correctly stated to the jury at the trial, to the following effect: that a jury in these cases "must not attempt to give damages to the full amount of a perfect compensation for the pecuniary injury, but must take a reasonable view of the case, and give what they consider, under all the circumstances, a fair compensation." The sum of $35,000 was held, under the circumstances, not to be a reasonable compensation, and the second verdict, awarding $80,000, has received the approval of the Court.

It is possible that this case, which has been much discussed in legal circles, has had some influence on the decision of the Privy Council in the case of *Lambkin & South-Eastern Railway*, an appeal from a judgment of the Queen's Bench at Montreal, which set aside as excessive a verdict of $7,000 for personal injuries sustained by the plaintiff, Lambkin. A cable message received on Tuesday states that the Privy Council has reversed the judgment of the Canadian Court of Appeal, the effect of which, we suppose, is to maintain the verdict on the first trial. The grounds of the decision, however, are not yet known on this side, and we, therefore, defer notice of it for the present.

THE AWARD OF COSTS.

A remarkable illustration of what was said on p. 1 of this volume, as to the freedom with which the discretion as to costs is exercised, is afforded by a case decided on Tuesday last by the Court of Appeal—*McClanaghan* v. *St. Ann's Mutual Building Society*, a note of which will appear in another issue. The case raised pointedly the question of the constitutionality of the Dominion Act permitting Building Societies to go into liquidation. Mr. Justice Torrance in the Court below was against McClanaghan on his pretention that the Act was *ultra vires*. (See 2 Legal News, p. 413.) In the meantime the local legislature went to work and re-enacted the Dominion Act, and ratified all that had been done under it; but reserved the rights of parties in pending suits. McClanaghan took his case to appeal, and the Court of Appeal has now reversed the decision as to the constitutionality of the Dominion Act, and holds that it was *ultra vires*, thus maintaining the correctness of the position taken by McClanaghan at the time he instituted his action. But the local legislature having legalized what had been done, there remained only the question of costs. The local Act had re-

served the rights of parties in pending cases, and the right to costs was really the only right that was covered by this reservation. Yet the costs are not even divided by the Court of Appeal. The appellant, although he succeeds on the principal question in issue, is condemned to pay all the costs of both Courts. We are not saying there is anything wrong in this. Mr. Justice Ramsay, it is true, differed strongly on this point. But there were circumstances in the case which appeared to the majority of the Court to justify the withholding of costs from McClanaghan. We only refer to it as an illustration—a somewhat remarkable illustration—of the observations made previously in referring to the case of *Montrait & Williams*, as to the freedom with which Courts constantly deal with the question of costs, irrespective of the rights of the attorneys who may have asked distraction. In the case of *Montrait & Williams* (p. 10) the parties had settled their case without the presence of the plaintiff's attorneys, and it was considered a fraud on the latter that the defendant had stipulated for a settlement without costs. In the McClanaghan case, the main question at issue between the parties was settled by a Statute; but though rights in pending suits were guarded, that is to say, the costs of such suits, the Court carries out the statutory settlement, without regard to the attorneys' claim to the costs of the action which is admitted to have been rightly brought.

THE ADMINISTRATION OF JUSTICE.

The following resolution has been published as having been adopted at a recent meeting of *bâtonniers* of the Province, in the city of Quebec:—"That considering the unsatisfactory state of the administration of justice in the Province, and the necessity of making some changes in the system, it is desirable to appoint a commission of three advocates, with power to examine into the judiciary system and the present laws of procedure; to consult the judges of the Queen's Bench and the Superior Court and the different sections of the Bar, and from such enquiry to prepare and recommend such changes in the present system as may be found needful; and resolved, that seeing the great importance of the subjects to be taken into consideration, the Governments of Canada and of this Province should be asked to contribute to the cost of such commission. Resolved also that A. Lacoste, Esq., *Bâtonnier* of the Bar of Montreal, be requested to submit this project to the respective Governments above named, and to obtain their co-operation and assistance."

PRIVILEGED CASES.

A rule was announced by the Court of Review at its sitting on the 31st of January, which is of interest to the profession in the country districts as well as in the city. It was stated that cases which are entitled to be heard by privilege will be called as such, but that if the parties are not then ready to argue them, they will not be called again until they are reached in their regular place on the roll.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, December 17, 1879.

Sir A. A. DORION, C.J., MONK, RAMSAY, TESSIER, CROSS, JJ.

MALO (deft. below), Appellant, and MELANÇON (plff. below), Respondent.

Defective Roof—Recourse against Contractor for cost of new Roof.

The question was as to the responsibility of the appellant for the cost of a new roof to respondent's house. The appellant, a contractor, had erected the house for respondent, but the roof turned out to be defective, and the respondent protested the contractor, who made some repairs, but finally, the respondent put on a new roof himself, for the cost of which he sued appellant, and got judgment for the amount.

The appellant, while admitting his liability to make repairs, complained of the judgment on two grounds, first, that a new roof was not necessary; secondly, that he had not been properly put *en demeure* before the respondent did the work himself. It appeared that when the house was being erected, appellant had desired to make a *toit de pic*, but at the instance of respondent he had put on a French roof.

MONK, J., (*diss.*) thought the judgment should be reversed. The evidence did not support the respondent's case. The new roof was unnecessary, and besides, there had been a change of

form, at the instance of the respondent, and the defects resulted from the alteration.

Sir A. A. DORION, C. J., said the majority of the court were of opinion to confirm the judgment. The case turned on the appreciation of evidence. The appellant's responsibility for the roof was undoubted, and he was sufficiently put *en demeure*, by the protest served on him, to remedy the defects, and he had made some repairs himself before the new roof was put on, but these repairs were not sufficient to remedy the defects.

Judgment confirmed.

Lacoste & Globensky for Appellant.
Beique & Choquet for Respondent.

MONTREAL, December 22, 1879.

Sir A. A. DORION, C. J., MONK, RAMSAY, TESSIER & CROSS, JJ.

ARCHIBALD et al. (defts. below), Appellants, and BROWN et al. (plffs. below), Respondents.

Agency—Personal liability of Trustees of an insolvent estate, who signed notes as trustees to the estate, under a deed of composition which gave them no power to sign notes.

The appeal was from a judgment of the Superior Court, Montreal, Johnson, J., maintaining the action of the respondents. See 1 Legal News, p. 327; 22 L. C. J., p. 126.

The action was to recover the amount of five promissory notes signed by the appellants as trustees to the estate of C. D. Edwards, an insolvent. The appellants were appointed trustees under a deed of composition, by which Edwards was allowed to carry on his business under the control of trustees, until the terms of the composition should have been complied with.

The defence to the action was that appellants only signed the notes in their capacity of trustees; that Edwards having failed to fulfil his obligations, the assignee had resumed possession of the estate, and that the appellants were not personally liable.

The judgment appealed from held that the appellants were personally liable, and condemned them jointly and severally to pay the amount of the notes.

Sir A. A. DORION, C. J. (*diss.*) was of opinion that the judgment should be reversed. The notes were signed in the way usual in cases where an agent contracts so as not to render himself personally liable, viz.: by adding his representative capacity to his signature. The evidence for respondents clearly established not only that the appellants did not intend to assume a personal liability, but that the respondents did not expect them to do so, for they only requested them to sign the notes as representing the Edwards estate, knowing well their connection with that estate. The rule laid down by the Civil Code, 1715 and 1717, is that one who acts in the name of another, is not personally liable to those with whom he contracts, even when he exceeds his authority, if he has given sufficient communication of his powers. And the Code of Louisiana expressed the rule in the following terms: "The mandatary is responsible to those with whom he contracts, only when he has bound himself personally, or when he has exceeded his authority without exhibiting his powers." This doctrine was sustained by Troplong, Mandat, No. 510,776; Dalloz, Dict. vo. Mandat, No. 378; Delvincourt, vol. 3, p. 241; and Pont, Mandat, No. 1057. In the present case, the appellants added to their signatures the words: "Trustees estate C. D. Edwards," and these words were not susceptible of any other interpretation than that they did not intend to bind themselves personally. But it was said that appellants' personal liability resulted from the fact that they had no authority to bind the estate, and that they had no responsible principal. Even if this were admitted, under the articles of the Code and the authorities cited above, the respondents could have no recourse against the appellants, they (the respondents) having accepted the notes with full knowledge of the authority under which appellants were acting. His Honor, however, questioned the truth of the proposition, that a person cannot act in a representative capacity without incurring a personal liability, when he has no responsible principal. The curator to a vacant estate is not personally liable, yet there is no principal to whom the creditor can look to enforce the contract; and some other cases of the same kind were cited. The Chief Justice concluded by referring to the case of *Redpath* v. *Wigg*, L. R., 1 Ex. 335, which was almost identical with the present one. In the view which he took of the case the

trustees signed the notes merely to give the respondents a claim on the estate, which they could not obtain by the mere signature of Edwards, and the very form of the notes was an indication of what the parties meant.

MONK, J., also dissented.

CROSS, J., for the majority of the Court, said if the notes stood alone, without the accompanying deed of composition, there were ample precedents to hold the signers liable personally, unless they could show that they signed as agents for a principal who was bound by their signature. It was acknowledged law that a person cannot, merely by assuming to himself a representative character, escape from personal liability in respect of his contracts. Unless his contracts in such representative character bind some known third party, such words of addition to his signature will be considered mere matter of description; and the irresistible conclusion is that the party with whom he has contracted must have looked to the personal security of the promissor for the due performance of the contract. Somebody must have been intended to be bound by the contract, and if there is no third party to resort to, the person contracting or promising as trustee is the party to be charged;—Addison on Contracts, p. 960. Resort to the composition deed did not affect the position of the appellants. They were not even styled trustees in the deed, and by the name of trustees they had no legal capacity. The addition of the term "trustees" to their signature was no more than an idle formality, save perhaps in their own interest to enable them to distinguish in keeping separate accounts of the property they had undertaken to manage. It might be said that the composition deed showed that appellants were really trustees, and that as such they should be considered agents acting for a principal. But if they were trustees or agents for any one, they were so for the creditors, as was, in fact, expressly declared in the deed, and in no sense for the debtor. It would point at too remote a remedy to say that the intention in making the notes in question was to bind all the creditors; and as regards the debtor there might possibly have been some room for inference that the debtor was the agent of appellants, but none for their being considered the agents of the debtor. They were his masters, not his servants. As to their being agents for an estate, there was no such thing as an estate to be agent to. The particular property and assets that were transferred to them by the assignee of Edwards' estate in insolvency were no longer an estate, but only certain particular assets which they had agreed to take hold of, and administer for the creditors. If they chose to purchase more goods for the same fund, it was they who purchased, and they became liable on their contract. They did not and could not say, "We purchase for a particular individuality represented by certain assets in our hands. It is that property and not we who buy from you, and that we make responsible in signing as trustees. We bind that property, but we do not bind ourselves." An independent fiduciary estate cannot be created, in a commercial convention, to be administered by agents binding that estate by purchases of goods, or signing promissory notes, without rendering themselves personally responsible.

The case of *Redpath* v. *Wigg* had been referred to. It was a claim by a new creditor against the inspectors of an estate in insolvency. It differed from the present case in the important particular that the inspectors there were existing legal functionaries, having powers of supervision and control of the insolvents' business under the Bankrupt Act, which allows the business to be carried on under supervision while the estate is still in bankruptcy, under the control of the Court; whereas in the present case the legal insolvency had terminated and the parties had come to be governed by their conventions.

RAMSAY, J. I presume there can be no question that a party may limit his liability on a note in the same way he may limit his liability in making a contract for a web of cloth. But that is not the question before us. What we have to decide is whether by writing the words "trustees estate C. D. Edwards" after a signature to a promissory note the party signing is relieved of all personal responsibility on the note. Primarily the rule is that the person signing a note is bound to pay it. If he seeks to avoid this responsibility he should show some quality in which he signed. The way to test such a pretention in this case, is to ask, who was bound on the note if the appellants were not? We have been told that it was the estate, and that if the estate went back into the

hands of the assignee, that there the holders of the note would rank on the estate with the old creditors. This is evidently no answer to the question, for it is not a recourse on the note at all, and any one taking such a note would evidently hold the obligation of no person known to the law. It has also been said that the appellants should not be held because they did not intend to bind themselves personally. It is very probable from what we know of the case that they did not intend to pay the debts of the insolvent Edwards; but with their intentions we have nothing to do. It is perfectly evident that whatever they intended, the respondents were perfectly determined to deal with them and with nobody else, and that they insisted from the first on their unequivocal personal obligation. I think the judgment should be confirmed.

Kerr & Carter, for appellants.

Abbott, Tait, Wotherspoon & Abbott, for respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, Feb. 4, 1880.

Sir A. A. DORION, C.J., MONK, J., RAMSAY, J.

CLARK (plff. below), Appellant, and EXCHANGE BANK OF CANADA (defts. below), Respondents.

Evidence—Proof of Handwriting—Onus of proof where a bank alleges that it has paid out money on a check the genuineness of which is denied by the depositor.

The appeal was from the judgment of the Superior Court, Montreal, Mackay, J., to be found at 2 Legal News, p. 124.

The appellant Clark had a current account in the respondent Bank, and at the end of each month was in the habit of leaving his bank book at the Bank to be made up. At the end of December, 1878, he so left his book, and when he received it back, he noticed that a check for $510, of which he knew nothing, had been charged to him. This check read as follows:—

Montreal, Dec. 26th, 1878.

The Exchange Bank of Canada, pay Mr. J. R. Deal or order, Five Hundred and Ten Dollars.

$510. F. A. CLARK.

The Bank claimed that the check was genuine, whereupon Clark drew out his other funds, and then drew a check for the $510, and when payment was refused by the Bank, he instituted an action for the amount. This action was dismissed by the Court below.

In appeal,

RAMSAY, J. The only question in this case is as to whether a check, bearing date the 26th December, 1878, for $510, drawn in favor of J. R. Deal, and purporting to be signed by the appellant, is genuine.

There can be no doubt that the appellant by his affidavit has put himself in the best possible position to deny the signature, even if such affidavit is not absolutely required by Art. 145 C. C. P. It is then for the party producing the check to establish that the signature is genuine. If the evidence of Smith and of Mr. de Lorimier with regard to their transactions with the representative of Deal and Swelver of Lachine be admissible as evidence, I think there could be very little doubt as to what the judgment ought to be. There are cases where evidence is admitted of facts which have no direct connexion with the principal transaction. But these are generally cases in which the knowledge or intent of a given person is in question. Here we are expected to declare a signature to be forged because the signatures of others have been forged under similar circumstances. This is establishing quite another principle, and one very open to abuse. It is true that the repeated execution of a peculiar fraud leads one insensibly to the conclusion that it is not unlikely that the same party is the author of both; and it is difficult to imagine circumstances more suggestive of such a suspicion than those of the case before us. We have coincidence of time, the use of the same names—Swelver and Deal—as well as the same form of fraud. Still it is evidently not conclusive. It seems, however, that under our system of evidence, those facts which are connected so that they give rise to a conjecture, may be admitted within the discretion of the judge, although no law has precisely specified to what degree of evidence they belong. They do not of themselves form proof, even to cast the burthen of proof on the other party; but joined to other evidence they serve to aid the judge in deciding on which side the balance of evidence turns (Danty Pr. p. 10). On a trial for a crime, evidence that another person, not to be found and otherwise unknown, was in a

position to commit the offence, would certainly be allowed. In this sense then, I think the judge in the Court below rightly admitted Smith's evidence. Having admitted it, I do not well see how the Court arrived at the conclusion that the signature was that of the appellant. Of the three witnesses called to prove the signature, not one swears positively. They all swear as to its similarity, and no more. Wm. H. Weir says: "I cannot say whether it is his signature or not." Marler says, "it certainly looks like his," Clark's signature; farther pressed, he notes a difference between exhibit A 49, and exhibit A 48, the check in question. "A 48 seems to be a little shaky," and he thinks this is not due to a difference of pen, or thicker ink, or a bad pen.

Wm. Weir's belief is shaken by the affidavit, and he will only swear that it is a perfect imitation. He cashed the check, and had no doubt it was genuine.

On the other hand, we have Johnston and the two Lees, who swear it is not the signature of plaintiff.

Besides this we have the evidence of the experts. This is contradictory, and it appears to me of all evidence the most fanciful. Writing by the same person has a sort of general resemblance, as an ordinary rule, which those familiar with it can hardly fail to recognize, but the formation of the letters is subject to countless variations, as the evidence before us exemplifies. We have here three gentlemen all pointing out to us differences, all of which really exist, yet it is beyond a question that all the checks but one are in the handwriting of Clark.

But in addition to all this we have the evidence of Garbutt, who proves that there was no transaction such as this, that no such check was issued in the ordinary course of business. The check was cashed by a stranger. The defence must rely on one of two theories: 1st. that the plaintiff, a broker doing a considerable business, entered into a negotiation with an unknown swindler to write a check for $510, which the stranger was to cash and Clark to deny in order to defraud the Bank; or, secondly, that Clark signed a check in blank, lost it, that it was found by a thief, who filled it up as payable to the mysterious Mr. Deal, and that Clark denied his signature to save himself from the loss of $510. It seems to me that both these suggestions are more improbable that the suggestion of the plaintiff, and as I think, for the reasons already given, that the evidence of Smith and de Lorimier may be considered, I am of opinion the proper conclusion to arrive at is that the defendants have failed to prove that the check Ex. A 48 is signed by the plaintiff, and therefore that he is entitled to the conclusions of his demand.

MONK, J., had a great deal of difficulty in concurring in the judgment. In the first place, the pleading was not what it ought to be. The action was brought for the sum on deposit, and the Bank did not lay the case before the Court fully by its plea, but it produced all the checks. Thereby Clark found out that the deposit had been withdrawn on a forged check. He did not, however, apply to the Court for leave to plead the forgery. But apart from the question of pleading, there was a difficulty on the evidence. The experts who examined a great number of genuine signatures considered these and the signature alleged to be forged to be similar, almost identical. The action being dismissed in the Court below on the ground that Clark had failed to prove that the check was a forgery, his Honor did not think that judgment should be reversed. He would not, however, enter a dissent.

Sir A. A. DORION, C.J., did not go so much upon extraneous matters as upon the fact that it was for the party who claimed to have paid money on the check in question to prove that it was really signed by the depositor. There was no evidence here to establish that it was the signature of Clark; the balance was strongly in favor of the appellant. The proof of handwriting was a most uncertain kind of proof. It was a mere matter of opinion; witnesses spoke as to resemblance; and the evidence was admitted because no better could be had. Here the weight of evidence being on the side of the appellant, and there being strong circumstantial evidence that the check was really a forgery, the judgment should be reversed.

TESSIER, J., and CARON, J. *ad hoc*, who were not present when judgment was rendered, transmitted their concurrence in writing.

Gilman & Holton for appellant.
Macmaster, Hall & Greenshields for respondents.

SUPERIOR COURT.

MONTREAL, January 31, 1880.

MURRAY v. BICKERDIKE.

MURRAY v. HEAD.

Freight—Liability of freighter where goods are jettisoned.—C. C. 2450.

JOHNSON, J. The plaintiff in these two cases is the master of the steamship "Colina," and he sues to recover the freight for a large number of horned cattle, sheep, and pigs laden on his ship by the defendants for conveyance from Montreal to Glasgow, and he alleges a tremendous list of exemptions from liability stipulated in the bills of lading, which were not furnished till afterwards. The pleadings and evidence are the same in both cases; and the plaintiff puts his case on the ground that the exemptions in the contract entitle him to freight, delivery or no delivery; and undoubtedly they do upon the face of the bill of lading; even though he alleges the fact of the loss of the cattle during a great storm at sea, by *force majeure*. The plea of the defendant in my opinion raises merely one point. It says the plaintiff did not perform his part of the contract, which was to deliver the cattle safely at the port of destination; that in fact, they were not delivered; but were jettisoned in mid ocean, which, it further says, not only deprived the plaintiff of a right to the freight; but gave the defendant a right to contribution on a general average. I say this seems to me to raise only one point. The defendant plainly says:—"You threw my cattle into the sea, and I have a right of contribution which I can urge against the owners." There is no express denial of the averments as to the excepted risks, or anything else in the declaration. Those facts are therefore admitted, and must have their effect, unless the defendant on his part can allege and show something to avoid the conclusion otherwise arising from them. What is it, then, that he says? He merely says the cattle were thrown overboard, and he has acquired thereby a right of contribution on a general average.

It is, therefore, quite immaterial and useless to enquire whether they were properly or unnecessarily jettisoned. The defendant himself tells us he has a right to contribution arising from the fact of the jettison. Therefore he must pay freight. Nothing is plainer on general principles than the liability of the freighter under such circumstances; and the reason cannot be given better than in the words of Pothier:—"Il y a quelques cas," says Pothier (Charter party, sec. 3, art. IV.) "où le fret est du en entier, quoique les marchandises n'aient pu parvenir à leur destination. Le premier cas est celui auquel elles ont été jetées à la mer pour le salut commun. L'affréteur à qui ces marchandises appartiennent, devant être en ce cas indemnisé de la perte des dites marchandises par tous les intéressés à la conservation du navire, il en doit le fret. S'il n'est pas juste que le jet ayant été fait pour le salut commun, il porte seul la perte de ces marchandises, par la meme raison, il n'est pas juste que le locateur du vaisseau en perde le fret." Our own Code reproduces this rule at art. 2450.

Then it was said in argument that the master could not bring the action in his own name, when the bill of lading has been signed by another. This point is not presented by the pleadings, and I do not decide it. But the plaintiff's allegation is that the master made this contract through his agents. That may be true or not; but it is nowhere expressly denied, as the law requires before it need be proved. There is a general protestation and a general denial, but that is all. The law says that every fact *that is not expressly denied* (not denied in the general mass, but by itself), is held to be admitted. The judgment will therefore be for the plaintiff for the amount demanded; but as the contribution is of course not asked here against the master, but only averred, and it was mentioned by Mr. Kerr that it was asked in another case, any rights the defendant may have to a *pro rata* reduction will be reserved to him. The judgment is the same in both cases.

Abbott, Tait, Wotherspoon & Abbott for plaintiffs.

Kerr & Carter for defendant.

CROSS v. ALLAN et al.

Insurance—Insurers suing owners of vessel in name of freighter for value of goods lost by negligence—Subrogation—Perils of the Sea.

JOHNSON, J. The last case (*Murray* v. *Bickerdike*) was by the master against the freighter to get paid for the freight. Here is one by the freighter against the owners to get the value of

the goods he shipped, on the ground of their having been lost through their fault and negligence. The defendants answer, 1st. That the plaintiff has no interest, he having insured, and having been paid by the insurer. The reply to this is that the insurer, on making payment, was subrogated in all the rights of the insured. Then, it is contended that the insurance, having been against loss by the perils of the sea, cannot now be recovered for on the ground of fault of the owners; but it is plain, I think, that the perils of the sea included negligence by the owners or their servants. That was decided in the case of *Cross* v. *The British America Insurance Company et al.* It was there distinctly held that if a vessel be portworthy at the time an insurance is effected, her becoming shortly afterwards unportworthy by the act of those in charge will not render the insurance void;—22 L. C. Jurist, 10. The perils of the sea insured against include a loss caused, or a peril made operative and destructive by the negligence of the master or crew. See Parsons on Marine Insurance, vol. 1, p. 381; Ed. 1868. Therefore the subrogation is perfect, and there is really nothing inconsistent between the pretension of the plaintiff to the insurance company, that the loss was by the perils of the sea, and the contention here by the insurance company in his name that the loss was occasioned by the fault of the owners. In their second plea the defendants admit receiving the goods on board; but they formed, as the defendants say, only part of a larger quantity to be shipped according to an understanding between the shipper and the agents of the ship; and a bill of lading was only to be given afterwards, and by the conditions of the bill of lading subject to which the shipment was made, the owners were not to be liable for any damage that could be covered by insurance. The plaintiff answers this by falling back on his allegation of fault and negligence of the owners as set up in his declaration. There is a third plea averring that the loss was occasioned by irresistible force and a peril of the sea, excepted in the bill of lading;—and to this the plaintiff makes the same answer, therefore the only question will be the question of fault and neglect of the owners or those for whom they are responsible under Art. 1676 C. C.

The ship in this case was the St. Patrick, owned by the defendants, and the question of fault and negligence was fully discussed and finally disposed of by a special jury in that case, and I might perhaps assume that the same facts would be established here; but, of course, I have not felt at liberty to act on that assumption; and I have had to make a careful examination of all the evidence, which is very long, that has been taken at *enquête* in this case. I can come, however, to no other conclusion than the jury did in the case of Butters; and, without recapitulating the well known facts, I must act as the jury did in that case, and find for the plaintiff. I may add that it was my lot to read all the evidence taken before the jury in the case of *Butters* v. *Allan*, when it came up on a motion for new trial on account of the verdict being against the evidence. I see also there was a motion made at the hearing to overrule all the evidence objected to and reserved at the time it was taken. I think this motion should be granted in part, and rejected in part. It applies first to the evidence of two witnesses, Norval and Rhynas, who are asked what Capt. Barclay said to them. That is pure hearsay, as Captain Barclay was not in the ship at the time, nor acting as the agent of the owners, and it is therefore rejected. Then the other objection is made to their opinion of the mode of tipping the vessel, given by Mr. Morrison and Captain Herriman. One of these gentlemen was a marine inspector, and the other a marine underwriter, and from their knowledge perfectly competent to give such an opinion, and their evidence is legal evidence.

Dunlop & Lyman for plaintiff.

Abbott, Tait, Wotherspoon & Abbott for defendants.

Copyright.—The portrait of any well-known character, copied from a photograph and applied to earthenware, with a wreath or other ornamentation, is not a new and original design, and cannot therefore be copyrighted. *Adams* v. *Clementson*, L. R., 12 Ch. D. 714.

An important functionary who died recently in England, was Calcraft, hangman during six and forty years. The deceased official was accustomed to speak with professional delicacy and pride of his "patients."