The Legal News.

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## *UNPUNISHED FRAUD.*

The English law is usually considered somewhat more complete than our own in providing for the punishment of frauds of every class; yet a recent prosecution has recalled attention to an omitted case. The facts as stated by the London *Law Journal* were as follows:—The "under boots" at a hotel was charged with stealing £25 from a commercial traveller. It appeared that a £25 note had been given by the prosecutor to the defendant to change. Instead of bringing back the change, the defendant disappeared and spent the money. The deputy stipendiary magistrate at Cardiff decided that the man could not be punished criminally, and the *Law Journal* says: "He could not be convicted of larceny at common law in respect of the note, because he received it with the full consent of the prosecutor. He could not be convicted of larceny as a bailee, because there was no bailment, the prosecutor never intending to get back the note. He could not be convicted of embezzling the change, because he was not a clerk or servant of the prosecutor. This, we believe, exhausts the possible criminality of the man; and therefore criticisms should be directed not to the decision but to the law, which has long been known to provide no punishment for this class of fraud."

The *Albany Law Journal* refers to a New York case, *Hildebrand* v. *People*, 56 N. Y. 394; 15 Am. Rep. 435, where the prosecutor handed to a bar-tender a $50 bill to take out ten cents in payment for a glass of soda. The bar-tender put down a few cents on the counter, and refused to deliver any more money. This was held larceny, the Court distinguishing the case from *Reg.* v. *Thomas*, 9 C. & P. 741, where the prosecutor gave the prisoner a sovereign to go out and get it changed.

## *THE PROOF OF PERJURY.*

In the case of *Reg.* v. *Leonard*, which will be found in the present issue, the Court of Queen's Bench sitting in appeal has affirmed the decision of Mr. Justice Ramsay, noted at p. 138 of this volume. The case is distinguished from that of *Reg.* v. *Martin* on the ground that in the latter the witness was not sworn before the Judge in open Court, but by the Prothonotary, and the written consent of the parties was essential to give him jurisdiction to administer the oath. Judge Ramsay directed attention to the case of *Reg.* v. *Hughes*, 2 Legal News, p. 39, in which a point was raised much like the case of *Leonard*. It will be observed that the notes of the stenographer are not taken as proof of the false statement. They must be supported by his evidence of what was said, or by the testimony of other witnesses, and it is competent for the defendant to call witnesses to establish that he never said what the notes contain.

## *REVOCATION OF ACCEPTANCE OF TENDER.*

The case of *Snowdon & Nelson* involves a point of considerable interest. The respondent, Nelson, an architect, had undertaken to make plans and superintend the erection of a house for the appellant. By an error in the specifications, the contract for the roof provided for a gravel instead of a tin roof. The appellant requested the roofer to make a change to a tin roof, in accordance with his original instructions, and this involving an extra cost of $84, appellant notified the architect that he would hold him liable for the consequence of his mistake, and deduct the $84 from the balance of commission due to him. This led to some correspondence, which ended in the appellant making a formal tender by notary of the balance of the commission, less the $84. This tender, which was made 24th Nov., 1876, was rejected by the architect, and the matter lay over till 17th January, 1878, when the architect signified by letter his willingness to settle on the terms proposed. "If you will send me your cheque for the amount tendered last year," he wrote, "I will return you a receipt for payment in full, reserving my rights however in case you may have since come to the conclusion that you don't owe anything." On the 5th February following, the architect wrote again: "As you have not seen fit to acknowledge

receipt of mine of 17th ult., I now withdraw the offer therein made." The following day, Feb. 6th, the appellant wrote saying that he had been obliged to look up the papers, and the next day, Feb. 7th, the offer of the cheque was repeated, and again refused. The architect did not actually take legal proceedings till the 3rd April following. The appellant, by his plea, besides the ground of error, set up the acceptance by respondent of his tender, and the amount tendered was brought into Court. Apart from the question of the error in the plans, and the architect's liability therefor, the Court had to decide as to the right of a person, who after long deliberation, and full knowledge of all the circumstances, formally signifies his willingness to accept an amount already tendered to him, to withdraw that acceptance if the debtor does not forthwith deliver the money. It was not pretended that the acceptance had been made under any misapprehension. It was made to close a disputed account, and the tender by the other party was renewed long before suit, viz.: within twenty-one days after the architect had offered to accept the money. The majority of the Court of Appeal have decided that the acceptance might be revoked if not acted upon by the delivery of the money within a reasonable delay, and that twenty days under the circumstances was not a reasonable delay.

## NOTES OF CASES.

### COURT OF QUEEN'S BENCH.

MONTREAL, June 15, 1880.

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

SNOWDON, appellant, and NELSON, respondent.

*Offer of creditor to accept amount previously tendered by debtor, if not promptly acted upon by debtor, may be revoked.*

Sir A. A. DORION, C. J. The respondent is an architect, who sued the appellant for a sum of $143.32, being the balance of $443.32, amount claimed to be due for commission for making plans and superintending the erection of a house for the appellant. It was agreed at the time the plans were made that the house would cost $9,000, and no more, the appellant having positively stated his intention of not proceeding with the building if the house were to cost more than that amount. By some omission in the specifications the roof was either not provided for, or was provided for as a gravel roof. When the appellant heard that it was to be a gravel roof, he strenuously objected, and an alteration was made, and a tin roof was substituted. The difference in cost between a tin roof and a gravel roof was $84, which the appellant had to pay to the roofer. When the architect presented his claim for the commission, amounting to $443.32, the appellant claimed that the difference in cost between the tin roof and the gravel roof should be deducted from his account. A good deal of correspondence took place, and the architect (the respondent) offered to deduct from his account half the difference in cost, namely $42, provided the appellant and the roofer bore the other half between them. This proposal was not agreed to, either because the roofer would not submit to any reduction, or because the appellant would not consent, and the proposal fell through. Subsequently, on the 24th November, 1876, the appellant tendered to the respondent the balance due him, less the $84. The respondent did not accept this tender, but on the 17th January, 1878, about 14 months afterwards, he wrote to the appellant that if he would send him his cheque for the amount tendered he would accept it. The appellant did not appear to have taken any notice of that letter, and 19 days afterwards the respondent wrote another letter, to the effect that as he, the appellant, had taken no notice of his letter, he withdrew his acceptance of appellant's offer. This was on the 5th February. The next day, February 6th, the appellant wrote to the respondent, that if he did not acknowledge receipt of letter, it was because he had not the accounts before him, and that when he had looked up the particulars, he would send him the amount which had been previously tendered. Upon that the respondent instituted an action, claiming the whole amount of $143.32. Under these circumstances, if the Court below had said that each party should lose half of the $84 and pay his own costs, the judgment would have appeared equitable at least, and probably would not have been disturbed. However, the Court below considered that the respondent was right,

and that he was not bound to submit to any reduction, and that the appellant was bound to pay the amount with all costs. This judgment has been appealed from, and it is for this Court to say whether the Court below was right. The complaint of the appellant as to the $84 is this: "By your omission in not providing for a tin roof, I was compelled to pay $84 more than I would have had to pay." This does not follow. In the contract a gravel roof was provided for; if it had been a tin roof, the amount would have been $84 more; therefore the error made no difference to the appellant. The only ground on which he could complain was this: that his house was not to cost more than $9,000, and that if he had known it was to cost $84 more, he would not have built. That would be a good ground; but what are the facts? The house only cost $8,666, and even adding the $84, it would not come up to $9,000. So that this ground cannot be urged. Then, as to the acceptance: the appellant said he had made a tender, and the respondent accepted it, and that was a contract. The answer to this is that the acceptance was not acted on. A delay of a day or two would, perhaps, not have been unreasonable; but after 19 days the letter was not answered, and the respondent wrote saying, "I withdraw my offer." Under the circumstances this Court cannot say that the Court below was wrong. The respondent was not bound to deduct this sum, and by no act of his is he bound to lose it now. In a case before the Privy Council, it was held that five days was a reasonable delay for a letter to be acted on.

TESSIER, J., who, in consequence of serious illness, was unable to be present at this sitting of the Court, transmitted his dissent, being of opinion that the judgment should be reversed with costs.

Judgment confirmed.

*J. L. Morris* for appellant.
*W. W. Robertson* for respondent.

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## COURT OF QUEEN'S BENCH.

MONTREAL, June 22, 1880.

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

REGINA v. LEONARD..

*Perjury—Deposition of witness sworn in open Court—Absence of consent in writing that evidence be taken by a stenographer.*

This was a case reserved by RAMSAY, J., presiding in the Court of Queen's Bench, Crown side. The question reserved will be apparent on reference to page 138 of this volume, where the report of proceedings appears.

RAMSAY, J. The defendant, Stanislaus Leonard, was indicted for perjury, alleged to have been committed by him as a witness in a suit in the Superior Court, wherein one Emelie Lamoureux was plaintiff and Didier Leonard was defendant. The defendant was duly sworn in open Court, the evidence was taken by a stenographer, who was also duly sworn, as appears by the *plumitif*, but there was no demand in writing requiring the Court to take the evidence by stenography, and no deposit of the stenographer's fees as required by law. On the part of the defence, objection was made to the production of the notes of evidence, taken and signed by the stenographer, as they were not taken in conformity to law. As the irregularity did not affect the oath, which was duly administered by competent authority (differing in this respect from the case of the Queen against Martin), and as the irregularity was as to a rule established solely for the purpose of collecting a fee, and not affecting the authenticity of the record, I ruled against the objection and admitted the notes as evidence. The defendant was convicted, and I reserved the case for the consideration of this Court, as to whether these notes were rightly admitted as evidence. This objection was only as to the regularity of the oath, but as it was suggested that the question of admitting the notes of evidence at all, independently of the question of the administration of the oath to the stenographer, is necessarily raised by the statement of the facts of the case, it was further stated by the Judge, as an amendment to the case, that the stenographer was examined as a witness with his notes, and fully established from his recollection of the case that the accused swore to the effect set forth in the notes. The questions reserved were 1st. Whether the stenographer was properly sworn; 2nd. Whether the notes of evidence can be used in the manner described; 3rd. Whether the stenographer can be examined as to what the accused said.

At the argument the learned counsel for the prisoner admitted that the stenographer was properly sworn, and that the taking of the oath was proved sufficiently; but he con-

tended that the notes could not be a record unless taken after a demand in writing, and therefore that they could not be produced in the case as evidence. That if they were a record they were evidence alone, and that the stenographer's evidence was improperly received. The cases of Reg. against Gibson, 7 Rev. Leg. p. 573, and Reg. against Martin, 21 L. C. J., p. 156, were relied on. In the former of these cases the accused was duly sworn under the law in open court and began his deposition before the court, and adjournment was had, and the accused continued his deposition before the Prothonotary according to a totally different system. The alleged perjury was as to a fact stated in the latter part of the examination. We held that the continuation of the deposition was a voluntary statement on which perjury could not be assigned. In the other case we held that the witness was not duly sworn, as the oath was administered by the Prothonotary, who had only a right to administer the oath and take the deposition after a consent in writing, which was wanting. In this case the defendant was duly sworn, so was the stenographer, and the evidence was taken by the stenographer instead of by the Judge. There was no demand to take the notes by a stenographer, and his fees were not paid, and therefore there was an irregularity as to the record of the evidence for the purposes of the civil suit. But if we are to believe the evidence on the trial for perjury, and if it was admissible as evidence, then there was a false oath, in the civil case, which that irregularity could not efface. It might at most be the proof of it, and this is really the pretension on the part of the defendant. No case has been produced in which it has been held that the false oath, duly administered, to an affidavit taken in a suit in which there was an irregularity in the procedure, was not perjury. If the offence be committed there must be the means of proving it. Now, it is argued that the only means of proving it is by what the law has declared to be a record; and that record cannot be used, because all the formalities required by law were not observed. The answer to this appears to me to be easy. The record is not null. It produces all the effect it was intended to have, and its authenticity is quite as great as if the formality of a demand in writing had been made. It is then said that if it was the record of the oath, it was proof alone, and the evidence of the stenographer should not have been taken. It seems to me that this pretension was disposed of by the very authority cited on the part of the accused, to the effect, that in the case of a marksman there should be evidence that the affidavit signed by his mark had been read over to him. This is no more than saying that there must be evidence that the contents of the affidavit were actually the assertions of the marksman. If it be necessary to have such evidence in the case of a marksman who, by affixing his mark, has made the document his own, how much more must it be necessary in the case of a record of this kind originally taken in a cipher and transferred to notes of which the accused never saw a line? It seems to me that the dictates of the most ordinary common sense leave no room to doubt that the evidence of the stenographer was not only admissible, but was absolutely necessary. So strongly have I always been of this opinion, that on the trial of Downs, for perjury, I refused to allow the notes of the stenographer to go alone to the jury, the stenographer being only able to state "these are my notes." It appeared to me that to admit these unsigned notes alone would be to permit the establishment of a new rule of evidence in criminal matters without the authority of Parliament. The object of 31 Vic., cap. 71, sec. 4, was not to allow the local legislatures to alter the criminal law, but to attach the penalties of perjury to every false oath made under the authority of a local act. That the view I took in the case referred to is in accordance with the practice in England, appears from the case of *Regina* v. *Thomas*, 2 Car. & Kir. 806. It was perjury assigned on a deposition in English taken before a magistrate and signed by the defendant, and it was held that he might be convicted on proof of a verbal deposition in the Welsh language, of which the written deposition signed by him is the substance. It was argued, speciously enough, that the record, and the record alone, was evidence, because the contents could not have been added to, and therefore they could not be diminished. This proposition contains a fallacy, it appears to me. The record of what was said could not be added to by parol evidence, for a very obvious reason,

namely, that it would have no sort of materiality—that it would not be in the case at all. It would not be deemed to be wilful, and it could not be corrupt. But it is manifest that the defendant could have brought up witnesses to establish that he had never said what the notes contained. Since these notes were written I have had my attention drawn to the case of *Regina* v. *Hughes*, which is to be found in the 2 Legal News, p. 39, which, I think, clearly shows that our decisions in the two cases mentioned, and in this one, are in accordance with English authority. I am therefore of opinion that the defendant was rightly convicted.

MONK, J., differed. His Honor was of opinion the stenographer had no authority to take the notes of evidence, there being no consent in writing, and that this irregularity in the proceedings was fatal to the case.

Sir A. A. DORION, C. J., said the majority of the Court held that the accused could not be convicted on the notes of the stenographer, because the notes were not read or signed by the accused. But he could be convicted on evidence of what he said. He was convicted on the memory of the witnesses who were present and heard what he said.

Conviction affirmed.

*Mousseau, Q.C.*, for the Crown.
*St. Pierre* for private prosecutor.
*W. H. Kerr, Q.C.*, for the prisoner.

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MONTREAL, June 15, 1880.

COTNOIR (deft. below), appellant, & PARENTEAU (plff. below), respondent.

*Admissions of defendant—Divisibility.*

The appeal was from a judgment of the Circuit Court, District of Richelieu, CARON, J., maintaining an action by respondent for $105, for money lent to appellant.

The appellant, defendant below, being examined as a witness, admitted that he had borrowed the sum of $100 from the respondent.

In cross-examination, the appellant stated that he had borrowed this sum, but had returned it, and at the time the action was instituted owed respondent nothing.

In re-examination, the appellant stated that he had paid one Odilon Fortier $350, and that in this sum was included the amount due to respondent.

The Court below held that appellant's admissions were divisible, and condemned him in the amount sued for. The *considérants* were as follows:—

"Considérant que la demanderesse reclame la somme de $105 pour argent prêté en Avril 1875, et qu'à la dite action le défendeur a plaidé par une défense en fait;

"Considérant que le défendeur, entendu comme témoin, admet avoir emprunté £25 de la demanderesse, sans stipulation de l'époque à laquelle il devait rendre la dite somme, et qu'il admet en outre qu'il n'a jamais rendu la dite somme à la demanderesse, mais qu'il a payé le printemps dernier au nommé Odilon Fortier $350, et que c'est dans cette somme qu'il prétend avoir payé la dite somme de $100, empruntée de la demanderesse comme susdit;

"Considérant que les dites admissions du défendeur sont divisibles;

"Renvoie la défense du défendeur, et condamne le défendeur à payer à la demanderesse la somme de $100 due tel que dit ci-haut, avec intérêt," &c.

The defendant appealed, contending that his answers could not be divided, and cited Larombière, traité des obligations, sur l'art. 1356 du Code Napoléon.

Sir A. A. DORION, C. J., said that this was not a case in which the principle of the indivisibility of the *aveu* could be applied. The defendant had not told the same story throughout. He said first that he had paid the plaintiff, and afterwards that he had paid the money to Odilon Fortier.

Judgment confirmed.

*Barthe & Wurtele* for appellant.
*Mathieu & Gagnon* for respondent.

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## SUPERIOR COURT.

MONTREAL, June 14, 1880.

FAUSSE v. BRIEN.

*Stamps on promissory note—Cancellation of stamp by initials of maker, but not written by himself.*

This was an action to recover $53, begun by a *capias* in the Superior Court. The defendant had already presented a petition for his liberation, which had been rejected by the Court. The issue now to be decided was whether the note had been properly stamped and ini-

tialed by the defendant. He had sworn that the initials on the stamp were not his, but were a forgery. There was no denial that the defendant made the note. There was evidence that there were initials on the note, but that they were not in the handwriting of the defendant. The Stamp Act, 31 Vic., c. 9, s. 4, requires that the signature or part of the signature of the maker, or his initials, or some integral or material part of the instrument shall be written upon the stamp, so as (as far as may be practicable) to identify each stamp with the instrument to which it is attached, and to show that it has not before been used, and to prevent its being thereafter used for any other instrument; or the person affixing such stamp shall, at the time of affixing the same, write or stamp thereon the date at which it is affixed, and such stamp shall be held *prima facie* to have been affixed at the date stamped or written thereon.

TORRANCE, J. We have here evidence that the defendant made the note, and that the stamp had his initials but not written by him. I am not prepared to say that the putting of his initials by another person for him is a nullity. We should presume that it was done by his directions, as it was a completion of his work, and the revenue is not in any way defrauded or injured. I could not therefore dismiss this action or say that this instrument is invalid. I doubt, further, whether the affidavit on the plea is a sufficient compliance with C. C. P. 145. It is worthy of remark that the defendant did not raise this point in his petition. It is an afterthought.

Judgment for plaintiff.

*P. Lanctot* for plaintiff.

*Duhamel, Pagnuelo & Rainville* for defendant.

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## MEASURE OF DAMAGES FOR INJURY TO RAILWAY PASSENGER.

ENGLISH COURT OF APPEAL, DECEMBER 17, 1879.

PHILLIPS v. LONDON AND SOUTH-WESTERN RAILWAY CO. (42 L. T. Rep., N. S. 6.)

In an action for personal injury caused by negligence, the damages cannot be assessed according to any mathematical calculation, but the jury ought to take into account all the circumstances of the case, including the income which the plaintiff was earning before he was injured, and give reasonable compensation.

Special fees earned by a professional man may be taken into consideration in calculating such income.

The rule laid down in *Hadley* v. *Baxendale*, 9 Ex. 341, that damages for breach of contract should be such as naturally arise from the breach, or such as may reasonably be supposed to have been in the contemplation of the parties, does not apply to an action for injury to a passenger by railway, so as to exempt the company from liability for damages in respect of the loss of an income which they did not know the plaintiff was earning.

The plaintiff in this case was a physician in large practice in London, and independently of his professional earnings he was in the enjoyment of a considerable private income. The action was brought to recover compensation for very severe injuries suffered by the plaintiff in a collision which took place on the defendants' railway on the 8th December, 1877, between an engine and a train in which the plaintiff was a passenger. The case was first tried before Field, J., in April, 1879, when the jury found for the plaintiff, with £7,000 damages. This verdict was set aside and a new trial granted by a Divisional Court, on the ground that the damages were insufficient. 40 L. T. Rep. (N. S.) 813; 2 Legal News, p. 105. This decision was affirmed by the Court of Appeal. 41 L. T. Rep. (N.S.) 121; 2 Legal News, 106.

The case was tried a second time in November, 1879, before Lord Coleridge, C. J., and a special jury at Westminster.

In summing up, Lord Coleridge told the jury that there was no answer to the *prima facie* case of negligence, and proceeded as follows: "It is therefore really and truly in fact a mere question of the assessment of damages, what, under the present circumstances, it is fair and reasonable the defendants should pay to the plaintiff by way of compensation for the injuries he has sustained. * * * It is to be such compensation as, under all the circumstances of the case, the jury who have to assess it think is fair and reasonable, and with every desire to assist you * * * I am afraid anything more definite or intelligible I am unable to lay down. It is a matter in which really the common sense of the country as represented by you twelve gentlemen in the jury-box must determine. * * An absolute compensation is not the true measure of damage in this case * * * it is not to be an absolute compensation, but a fair and reasonable amount of damages under

the circumstances of the case. * * * Now what is really that fair and reasonable amount? It must be made up * * * of several ingredients. I do not mean that if you give, I will take a round sum, say £100 * * * you must go so far as to give £25 for pain and suffering, £25 for loss and damage, £25 for future suffering, and £25 for the chance of not doing work again. By saying the compensation consists of so many ingredients I do not mean to say that you must put a fixed sum against each of these, but there are certain leading considerations to be taken into account by you in arriving at a lump sum which at last it will be your duty to assess in this case. Now, one of these is the pain and suffering; as to that there is no question * * * pain and suffering of a most acute kind Dr. Phillips has sustained; that has not been seriously disputed, and compensation for that pain and suffering he is undoubtedly entitled to. This is a serious, manifest and undisputed fact. Then there is the loss, at any rate for two years, of his business. Now, what is that business?" The chief justice then directed the attention of the jury to the evidence as to the plaintiff's professional income, the effect of which was to show that during the three years before the accident his net earnings, after deducting all the expenses incurred in carrying on his profession, had been about £5,000 a year. He then proceeded as follows: "But then it is said, that is too much, because some of these are large payments which have come from nine clients, and in the nature of things it is not likely that these sums will recur. This £1,300 from one person in three years, that £400 from another in two years, £360 from another in two years, and nearly £500 from another in three, all these and other sums are not likely to recur. Now, I do not see at all why the confidence of the gentlemen who make these large payments should diminish, or their generosity either, and I do not quite see why, in the class of patients this gentleman had, people who send £1,000 and £500 and so on (£5,000 in one case) to their doctor, without inquiry, to pay for the number of visits that had been had, I do not see why the same gentleman should not pay £5,000 over again. * * * It is a lucky thing, if Dr. Phillips should recover, that his practice is among patients who do not care about money. * * * I really do not see why these should be the only nine people in the world who do these things, and who will continue to do them, and why, if they cease to do so, they should not be succeeded by others equally generous; but you must give it such weight as you think fit. Subject to that observation it comes to this, that it is about £5,000 a year, and it has been an increasing practice. * * * There is no doubt that from that time in 1877" (the time of the accident) "to this he has not earned a shilling, and that for that some very considerable compensation is to be awarded by the company. Now then comes a far more important question, and that is, what is to be his future?"

Lord Coleridge then commented on and compared the evidence given by the medical witnesses with regard to the condition of the plaintiff, and the opinions which they expressed as to the possibility of recovery. He then proceeded as follows: "Gentlemen, that really is the whole case. I do not know that I could usefully occupy your time any further. I have placed before you, as far as I can, the law which you are to take into consideration in granting that compensation, and now I leave it to you, under all the circumstances of the case, to give such fair and reasonable compensation to Dr. Phillips as you think he deserves, I do not mean morally, but as you think the circumstances of the case warrant you in giving. Of course, in awarding that compensation you will be mainly influenced by the view you take of the probability of his being able in eighteen months or two years' time, or possibly even in less, or it may be more, to resume the lucrative practice which certainly, for a time, beyond all question, he has been deprived of by the action of the defendants. I think I may direct you to be good enough to find for the plaintiff, and your duty is to say what amount of damages, under the circumstances, you will give."

As to expenses, Lord Coleridge directed the jury to give what they thought fair and reasonable, adding: "If you think that he was put to any extra expense, that his living, his journeys, or his carriages or horses were seriously increased, or that he was put to expense by the action of the company, that is an element that you ought to take into your consideration. He puts it at £1,000, nad you will say, upon the

whole, whether you think that is too much or too little."

The jury found a verdict for the plaintiff for £16,000 damages. The Common Pleas Division refused a rule for a new trial.

Serjt. *Ballantine* (*J. Brown, Q. C.*, and *Dugdale* with him), on behalf of the defendants, moved in the Court of Appeal for a rule *nisi* for a new trial on the ground of misdirection, and also on the ground that the damages were excessive. The defendants, when they entered into the contract of carriage with the plaintiff, had no knowledge, and no means of knowing, that he was earning a large income by the practice of his profession. Therefore the jury ought not to have been directed to take into account the plaintiff's professional income in assessing the damages. That head of damage was not in the contemplation of the parties when they entered into the contract, and was too remote. *Hadley* v. *Baxendale*, 9 Ex. 341. The principle laid down in that case ought to be applied to contracts for the carriage of passengers by railway. See Mayne on Damages, p. 19; *Hobbs* v. *London & South-Western Railway Co.*, 32 L. T. Rep. (N. S.) 252; L. Rep., 10 Q. B. 111.

The fact that the plaintiff had a large private income independently of his professional earnings ought to have been taken into account. At any rate, in calculating the amount of the plaintiff's professional income, the special fees which he received ought not to have been included. They are too uncertain to be counted as forming part of his regular income.

[To be concluded in next issue.]

## *GENERAL NOTES.*

MURDER UNDER PECULIAR CIRCUMSTANCES.—A quaint piece of criminal law was disintered at the recent Maidstone Assizes. A man and his wife, after drinking heavily for eight days, threw themselves into a river, no doubt intending, so far as they were capable of forming an intention, to commit suicide together. The husband was drowned, but the wife escaped, and she was thereupon charged with the murder of her husband. In the beginning of the seventeenth century the judges were perplexed with a similar case (Anon., Moore, 754). A man and his wife, "*ayant long temps vive incontinent*," were in great distress. The husband said to the wife, "I am weary of life and will destroy myself," upon which the wife replied, "If you do, I will too," and thereupon the husband mixed poison with some drink, of which both partook. The husband died, but the wife recovered. According to Moore, the question whether the wife was guilty of murder was considered, but he does not give the decision. Mr. Justice Pattison, however (8 C. & P., 418), evidently referring to this case, says that the wife was acquitted on the ground that she was under the control of her husband. In 1823, in a case (*R.* v *Dyson*, R. & R., 523), where the wife was drowned and the husband escaped, it was held by nine judges that, "if the deceased threw herself into the water by the arrangement of the prisoner, and because she thought he had set her the example, in pursuance of the previous agreement, he was a principal in the second degree, and was guilty of murder;" and in a subsequent case of *R.* v. *Alison* (8 C. & P., 418), Mr. Justice Pattison told the jury that "supposing the parties mutually agreed to commit suicide, and one only accomplished that object, the survivor would be guilty of murder in point of law." Following these authorities in the recent case, the Lord Chief Justice, in summing up, told the jury that they must take the law to be that if two persons agreed together to commit self-murder, and one of them survived, the survivor was guilty of murder. Happily, however, it was not necessary to put this doctrine into practical application, as the jury seem to have thought that the parties were not in a condition to form a definite intention to commit suicide, and consequently found the woman not guilty.—*Solicitors Journal.*

CRIMINAL LAW—DISOBEDIENCE OF INSTRUCTIONS BY AGENT.—Defendant, who was a dealer in drugs and medicines, left his brother's wife in charge of his store, and forbade her to sell liquor in quantities less than a gallon, except for medicinal purposes. This instruction was disobeyed, and defendant was indicted. *Held*, that the maxim "*qui facit per alium facit per se*" is applicable in criminal cases only when the instructions are obeyed. Had the wife, who made the sale, followed the instructions of her principal, no offence would have been committed. It was her independent act, therefore, which resulted in a violation of the law, and for this the defendant is in no way responsible. —*State* v. *Baker*, Supreme Court, Missouri, May 26, 1880.