The Legal News.

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A LEGAL CURIOSITY.

We have been shown an old document which in several ways is interesting. It is a deed of sale of a farm, near St. Johns, dated 8th November 1765, made by Isaac Bureau dit St. Jean and Marie Angelique Girard, his wife, in favour of "Messieurs Gabriel Christie, Ecuier, Lieut.-"Colonel et Quartier-Maitre Général des "armées du Roy, et Moses Hazen, Ecuier, "l'un des Juges de Paix de Sa Majesté dans le "District de Montréal."

The first point noticeable about this deed is that while in the French language, and prepared by a French Notary, M. Simonnet, it is in original form,—not in the form of minute, yet not in what under the French form is termed *en brevêt*, and that the two N. P.'s sign as witnesses. This form was probably adopted, the purchasers being English, because of the contention then insisted on by the English inhabitants, that in all matters English laws had supplanted those of France. The purchasers, accustomed to English ways, doubtless insisted on having something to show for their money, and were not content to leave that for which they paid, in custody of a notary.

The second point is that it bears the celebrated stamp, which figured so largely among the causes of the American Revolution. This is for 2/6 sterling, and is an impressed or embossed stamp on the left hand top corner. The device consists of a heraldic rose displayed,—surrounded by the garter motto, surmounted by the crown,—above which is the word "America," while at the lower margin of the device is the amount, "II shillings VI pence." Another stamp in printer's ink indicates that the sheets were issued at "9 pence per quire."

This obnoxious Stamp Act was passed by the Imperial Parliament, on the 22nd March 1765, and came into force on the 1st November 1765, only eight days before the date of this deed. Both before the latter date and after it, the resistance to this system of taxation of the colonies by the home government was so systematic and strong, that the stamps were not allowed by the inhabitants to be issued in any of the American colonies, except Canada, Georgia, and the West India Islands. In some places, the stamped paper was seized and burned, in others, notably at Boston, the distributors were forced to resign their offices and ship the paper back to England. The Imperial Parliament yielded to the pressure of opinion and repealed the Act on the 17th March 1766, so that it was law for less than five months, and the field within which it really was allowed to have effect was very narrow. On this deed, then, we see one of the small number of these detested stamps which were used. From a return made to Parliament, it appeared that the Act had cost the Government for cutting stamps, for paper, stamping it, sending to America and expenses of distribution, £25,000, while the revenue received was about £1,300, got at the cost of the anger of the colonies. The first united action taken by the hitherto separate American colonies was in resistance to this Stamp Act. The first Congress of representatives from all the colonies, and since called the Stamp Act Congress, met at New York in 1765, to promote resistance to the act and its repeal.

The third point is as to the purchasers, whose original signatures appear. Colonel Christie, afterwards General Christie, was a well-known man in those days. He was in Canada officially as Quarter Master General, and afterwards as General for many years. He was one of those who embarked largely in the purchase of lands and seigniories from the French *noblesse*, who preferred to retire to France after the conquest. He acquired several seigniories in the neighbourhood of St. Johns, some of which still remain in the hands of his representatives.

Moses Hazen became a man of note on the invasion of Canada by the Americans, under Montgomery, in 1775. He apparently had come from the British Colonies, and when, in later years, the breach between the mother country and her colonies became *war*, he espoused the revolutionary side, (although, as appears by this deed, he had, in 1765, consented to use the hated stamped paper,) and on the arrival of Montgomery at St. Johns' he raised a battalion of Canadian sympathisers with the

invasion, whom he led to Montreal, and then to the siege of Quebec by Montgomery and Arnold. He is repeatedly mentioned as an active Canadian on the Revolutionary side in the interesting narratives of Sanguinet and others, published by M. L'Abbé Verreau.

Deeds were then registered at Quebec in terms of an Ordinance of General Murray passed in 1764. This deed bears two certificates, showing a curious accuracy of detail, for the first certifies that the document had been "received into the register office in "Quebec, on Monday, the 7th day of July 1766, "at six o'clock in the afternoon," while the other certifies that it was "Registered in said "office, on Wednesday, the 9th July 1766, at "seven o'clock in the afternoon, on the French "Register, Letter D, page 216." They are signed "J. Goldfrap, D. Reg'r." Mr. Goldfrap kept his office open later than the easy hour of 3, which is the present limit of Registrar's duty.

R. A. R.

NEW BOOKS.

THE LAW OF REGISTRATION OF TITLES IN ONTARIO, being an annotation of THE REGISTRY ACT (Revised Statutes of Ontario, cap. cxi), together with a collection of Practical Forms, Tariff of Fees, etc., by Edward Herbert Tiffany, of Osgoode Hall, Barrister-at-Law. Publishers, Carswell & Co., Toronto and Edinburgh.

The title of this work shows at once that it falls within the category of those which are in constant use in the practitioner's office, and which, if executed with conscientious regard to accuracy, prove so valuable. The Registry Act which Mr. Tiffany has undertaken to expound was passed in the year 1865, and, with the exception of a manual published in the following year by Mr. Woods, has not found an annotator. In the interval, many important decisions have been rendered by the Ontario Courts, bearing upon the construction and effect of the Act and the later Statutes referring to the subject, and it was desirable that these decisions should be collated and cited under the proper heads. The author has also examined the decisions of Quebec, Nova Scotia and New Brunswick, as well as those of the English and United States Courts, which are referred to where they are in point. Nearly a thousand cases are thus cited. The work concludes with a collection of forms and other information indispensable to the conveyancer.

Although Mr. Tiffany's book is intended mainly for his professional brethren in Ontario, it nevertheless embraces much that is instructive to those who are studying the subject of registration. So far as the very limited examination we have been able to make of the work enables us to judge, the subject has been carefully and exhaustively treated, and Mr. Tiffany's commentary leaves little to be desired. We must add that the book has been excellently printed and bound, and reflects credit upon the enterprising law publishers, Messrs. Carswell & Co., to whom the profession is indebted for a long series of useful books.

ANATOMICAL STUDIES UPON BRAINS OF CRIMINALS: A contribution to Anthropology, Medicine, Jurisprudence, and Psychology, by Moriz Benedikt, Professor at Vienna. Translated from the German by E. P. Fowler, M.D. Publishers, Wm. Wood & Company, Medical Publishers, 27 Great Jones street, New York.

Mr. Fowler, in this translation of Prof. Benedikt's investigations, has introduced to the notice of the medical and legal professions on this side of the Atlantic a curious and interesting treatise. How far those who examine the work may be disposed to agree with the somewhat startling corollaries of the learned author we are not prepared to say, but enough will be found in these pages to enlist the attention of the reader and gain respect for the investigator of a dark and abstruse subject.

The work opens with an explanation of the structure of the brain. It proceeds to give twenty-two observations of the brains of executed criminals, illustrated by photographs exhibiting the anatomical outlines of each case. Professor Benedikt believes that he has discovered certain defects in the cerebral constitution of these and other criminals, which indicate an inability on their part to restrain themselves from the repetition of a crime, notwithstanding a full appreciation of the superior power of the law. He is convinced that the "constitutional criminal is a burdened individual," with "the same relation to crime as his next blood kin, the epileptic, and his cousin the

idiot, have to their encephalopathic condition." He finds animal similarities in brains of low grade—similarities with the brain of the ape and the fox and beasts of prey generally. Such views, if shown to be well founded, could not fail to have an important bearing upon penal legislation. Prof. Benedikt does not pretend that he has yet been able to rise beyond the region of doubt and guess-work, but he modestly offers his present treatise as "a grain in the great sowing, of which the harvest shall be a true knowledge of the nature of man."

The translator, Dr. Fowler, has executed his part with zeal, and the publishers, Wm. Wood & Co., have added the agreeable accessories of clear typography and handsome binding. We commend the work to the attention of our readers.

PRINCIPLES OF THE LAW OF TORTS; or, Wrongs independent of Contract. First American, from the second English Edition; by Arthur Underhill, M.A., of Lincoln's Inn, Barrister-at-Law, assisted by Claude C. M. Plumptre, of the Middle Temple, Barrister-at-Law, with American cases, by Nathaniel C. Moak, Counsellor-at-Law. Publishers, William Gould & Son, Albany, N.Y.

An American edition of a work which has passed rapidly to the second edition in England will no doubt prove acceptable to the profession. The author has divided his subject into two parts, the first treating of torts in general, embracing six chapters, (1) of wrongs purely *ex delicto;* (2) of *quasi* torts; (3) of the liability of a master for his servants' torts; (4) of the limitation of actions *ex delicto;* (5) of the measure of damages in actions of tort; (6) of injunctions to restrain the continuance of torts. The second part treats of the rules relating to particular torts, and in this the author treats of defamation; of malicious prosecution; of false imprisonment and malicious arrest; of assault and battery; of bodily injuries caused by nuisances; of negligence; of adultery and seduction; of trespass to land and dispossession; of private nuisances affecting realty; of fraud and deceit; of trespass to and conversion of chattels; of infringements of trade marks and patent and copyright. The law is reduced to brief rules which are clearly stated, and the citations of cases include decisions up to date.

The American editor has had the assistance of Mr. John T. Cook in the preparation of the portions upon Trade-Marks, Copyrights and Patents, and extensive additions have been made to the original. The work, which comprises over 800 pages, is issued from the well-known Albany firm of William Gould & Son, and appears with all the advantages of type and binding which commend the publications of that house.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, June 20, 1881.

DORION, C.J., MONK, RAMSAY, TESSIER & BABY, JJ.

STEWART (deft. below), Appellant, and BREWIS (plff. below), Respondent.

Contract made while ship is in peril—Salvage.

A steamship, carrying passengers and a valuable cargo, had lost her screw, and was in a dangerous position. Held, that an agreement to pay £800 sterling for towage into harbor was not exorbitant, and especially as the service, if treated as salvage, would have been worth the above sum.

The appeal was from a judgment of the Superior Court, Montreal, Mackay, J., reported in 3 L.N. 99.

The question was as to the validity of a contract to pay the sum of £800 sterling, for towing into Gaspé harbor a steamship, the Lake Champlain, the contract being made while the vessel was in distress. The appellant was the master of the steamship Lake Champlain, and the respondent was the master of the steamship Nettlesworth. On the 19th and 20th of July, 1879, the appellant, whose ship was lying at the time about fifty miles southward of the harbour of Gaspé, executed the following agreement:—

"SS. Nettlesworth, 19 July, 1879.

"I hereby promise to pay as per agreement, the sum of £800 to tow the steamship Lake Champlain into Gaspe Harbor.

(Signed), WM. STEWART,
Master of SS. Lake Champlain."

This service was performed for the appellant, who, on the 20th July, gave the respondent the following certificate:—

"SS. Lake Champlain.

"This is to certify that the SS. Nettlesworth has completed his agreement by towing the SS. Lake Champlain into Gaspé.

WM. STEWART,
Master of SS. Lake Champlain."

The action was brought by the respondent to recover the £800 sterling for the services mentioned in both documents.

The appellant by a special plea set out that the Lake Champlain sailed from Liverpool to Montreal on the 3rd July, 1879; at ten o'clock in the forenoon of the 13th, her screw broke down. She was then about eight miles off the southern point of the Island of Anticosti. At two o'clock of the same afternoon, the mate was put on board a passing ship, to be landed at Father Point, whence he might telegraph for steam tugs. About 3 p.m. on the 19th, six days after, the Nettlesworth hove to and offered assistance. The appellant found his provisions and water running short, and the passengers, 37 in number, implored him to accept assistance. He offered first £300 or £400, but these offers were refused, and finally the agreement above cited was entered into. The plea went on to state that this agreement was extorted from him, and that £800 was a grossly exorbitant charge. That before midnight of the same day the vessel was at anchor in Gaspé Basin, and the towage was performed during perfectly calm weather, and was of the ordinary kind.

DORION, C. J., said it was admitted at the argument that if the services were to be charged as salvage, the sum of £800 would not be excessive. Courts will not interfere in such cases unless the agreement is extorted by pressure of extreme necessity, and the amount be exorbitant. Here the vessel had a number of passengers on board; she had lost her propeller; she was on a dangerous coast, and if a storm had arisen her position would have been perilous. The appellant, by entering into an agreement to pay £800, could not be in a better position than if he had simply agreed to pay what was reasonable under the circumstances. In the latter case the respondent would be entitled to salvage, which, by the appellant's own admission, would have amounted to at least £800. It was further to be remarked in this case that after the steamship was in safety in Gaspé basin, the captain did not protest that the contract was made under duress, but gave a certificate that the respondent had performed the agreement. This did not bind the owners, but it was evidence that the captain did not at that time think that he had been imposed upon. Under all the circumstances the Court did not think that the judgment should be disturbed.

RAMSAY, J. I concur in the judgment dismissing this appeal with some hesitation, and solely on the ground that there is a conflict of evidence rendering the decision doubtful. In such cases this court does not interfere with the decision of the court below. The certificate given by the captain that the services were rendered does not appear to me to affect the case. It does not purport to be a ratification, and the captain had no authority to ratify. To avoid misunderstanding I think it is right to say a few words on the principles which I think govern in cases like the present. In the first place, it appears to me to be clear that the services rendered were in the nature of salvage services. The steaming power of the "Lake Champlain" was useless. It does not appear very clearly whether the derangement of the screw had interfered with the working of the rudder or not; but it is quite certain that she was drifting helplessly and that she could do nothing to extricate her from the position in which she was, and without help the only chance of safety was the rather unlikely accident of drifting into port. The Jubilee, 42 L. T., N. S. p. 594. But it is because the service was in the nature of salvage that I think a court might have interfered with the contract. It never has been denied that an agreement to pay so much for salvage might be set aside if it were exorbitant. The doctrine is that it will not be readily set aside, if clearly proved, solely because it is a hard bargain. It must be wholly inequitable, that is exorbitant.

The Helen & George, 368 Swabey; The Firefly, 240 Swabey; The James Armstrong, 33 L. T., N. S., p. 390; The Medina, 1 L. R. Adm. Div. 272; Confirmed in appeal, 2 L. R. Adm. Div. 5; The Silesia, 43 L. T., N. S. 319; The cargo ex Woosung, 1 L. R. Adm. Div. 206; The America, 2 V. Ad. cases, Stuart p. 214, where there is an able statement of the whole case.

Under our law there could be no interference with a contract except in case of fear, violence, fraud or error, and it is precisely because the element of fear of danger is necessarily present

in all contracts of the nature of that sued upon in this case that I think courts can interfere to modify them. I go further and say that I don't think the contract in such a case strengthens in the least the position of the party exacting it, and I should not have been sorry to have concurred in a judgment which would have had the effect to discourage the practice of demanding such agreements.

The policy of allowing handsomely for salvage services is easily understood, and wise, but roughly to convert this rule into sanctioning extortion, simply on the ground that it was for salvage, seems to me to be a misconception of the policy of the rule, and disastrous. It may be difficult in practice to estimate the value of salvage services, but they have a measure.

In the case of "The Medina," Sir R. Phillimore likened the conduct of the salvor in extorting an exorbitant agreement to that of a pirate. It seems to me that the piratical disposition enters more or less into all agreements of that nature, for seamen know perfectly that they will be more than indemnified for their actual loss.

Judgment confirmed.

Davidson, Monk & Cross for Appellant.
Trenholme & Taylor for Respondent.

SUPERIOR COURT.

MONTREAL, June 18, 1881.

Before TASCHEREAU, J.

SEMMELHAACK v. CANADA FIRE & MARINE INSURANCE CO.

Fire Insurance—Change of ownership of goods insured.

Held, where the policy prohibited change of title without the permission of the company, that a sale of the property, by way of protecting a person becoming judicial surety, the resolution of such sale depending on the termination of the suretyship, made the policy null.

The action was against an Insurance Company on a policy of insurance, by which the plaintiff's stock-in-trade, consisting of fancy goods, was insured against loss by fire.

The principal plea of the Company was to the effect that, contrary to a condition endorsed on the policy, a sale and transfer of the goods of plaintiff had been made to one Fox, in consideration of a certain suretyship entered into by Fox in favor of plaintiff's brother, in order to obtain the release of the brother from jail.

To this the plaintiff answered that there had been no delivery of the effects mentioned in the deed of sale, that the stock had always remained in Semmelhaack's possession, and the deed was without effect.

Condition No. 2 on the back of the policy was as follows:—"Without written permission of the Company, it will not be liable for loss or damage * * * if any change takes place in the occupation, location, title or position of the property herein specified. In every case without such permission, this policy is void, and all insurance thereunder immediately ceases and determines." It appeared that Semmelhaack had, without the consent of the Company, transferred his stock to one Cox, the consideration being that Cox had become surety in a proceeding for liberating Semmelhaack's brother from jail, in which he was confined under a *capias*. The same day Fox gave Semmelhaack a power of attorney to continue the business.

The COURT sustained the plea and dismissed the action, the judgment being as follows:—

"La Cour, etc.

"Considérant que par acte de vente fait et passé à Montréal, devant Perrault, notaire, le 28 juillet 1879, le demandeur avait, antérieurement à l'incendie par lui allégué, vendu, cédé et transporté à un nommé Fox, à ce présent et acceptant, tout son fonds de commerce, qui était le même que celui qui était l'objet de l'assurance effectuée par la défenderesse, en et par la police d'assurance portant le numéro 15,887, mentionnée dans la déclaration et dans les plaidoyers en cette cause;

Considérant que la considération de la dite vente était un cautionnement judiciaire, que le dit Fox devait consentir, et a de fait consenti le même jour, à la demande du demandeur, dans une certaine cause ci-devant pendant devant cette cour, sous le No. 1,989, dans laquelle Leo Hamburger était demandeur, et William Semmelhaack (frère du dit présent demandeur) était défendeur, et emprisonné en vertu d'un bref de *capias ad resp.* émané en la dite cause;

"Considérant que la dite vente fut faite sous la condition résolutoire que dès que le dit Fox

serait libéré du dit cautionnement, la dite vente serait résolue et les parties à icelles remises en le même état que si le dit acte n'eût pas été passé, mais que la dite clause résolutoire n'a fait que rendre conditionnelle la résolution du dit acte, et que, dès le moment de la dite vente, le droit de propriété, pur et simple, du dit fonds de commerce est passé du demandeur au dit Fox, qui était propriétaire lors de l'incendie et même lorsque l'action a été portée ;

" Considérant que par la volonté expresse et formelle des parties au dit acte, il eût immédiatement son plein et entier effet, le demandeur perdant de suite le contrôle et la possession légale du dit fonds de commerce, qui fut placé sous le contrôle et entre les mains du dit Fox ; ce dernier, par acte passé le même jour, ayant nommé le demandeur comme son agent et mandataire pour l'administration et la vente du dit fonds de commerce, et le demandeur s'obligeant de rendre compte au dit Fox de sa dite administration et de lui remettre tous les deniers provenant de la vente en détail du dit fonds de commerce ;

" Considérant que le dit acte de vente du 28 juillet 1879, n'a pas été dénoncé à la défenderesse, qui n'a pas donné son consentement au dit acte, ne l'a pas approuvé, et n'y a pas participé ;

" Considérant que la résolution du dit acte de vente, survenue depuis le dit incendie et depuis l'institution de l'action, ne peut affecter les droits de la défenderesse ou sa responsabilité en cette cause ;

" Considérant qu'en vertu des articles 2576, 2483, 2475, et 2571 du Code Civil, et de la condition, numéro 2, attachée à la dite police d'assurance, la dite police d'assurance est devenue nulle, et la dite assurance a été terminée par suite de la dite vente et cession opérée sans le consentement et la participation de la défenderesse ;

" Maintient la défense, déclare que la dite police d'assurance a été annulée, rendue de nul effet, et la dite assurance terminée dès avant l'incendie allégué en la déclaration, et renvoie l'action du demandeur avec dépens, etc."

Action dismissed.

Macmaster, Hall & Greenshields, for plaintiff.
H. J. Kavanagh, for defendants.

SUPERIOR COURT.

MONTREAL, June 18, 1881.

Before TASCHEREAU, J.

GOODWATER v. HENDERSON.

Droit de réméré—Failure to exercise within time stipulated.

Where a droit de réméré is stipulated on payment of a fixed sum within a specified time, the entire sum must be paid within the delay.

The action was brought to obtain the resiliation of the sale of a certain floating dry dock. The sale had been made by plaintiff to defendant 31st January, 1877, and in the deed a *droit de réméré* was stipulated in favor of plaintiff on payment of $1,600 on or before 1st November, 1878. Plaintiff now tendered the balance which he alleged to be due of the $1,600, and asked for the cancellation of the sale.

The defendant pleaded among other things that the *droit de réméré* had not been exercised in time.

The COURT maintained the plea and dismissed the action, the judgment being as follows :—

" La cour, etc.

" Considérant que le demandeur n'a pas exercé dans le délai fixé le droit de réméré stipulé dans l'acte de vente en date du 31 janvier 1877, ni remboursé dans le dit délai au défendeur le prix de vente mentionné au dit acte ;

" Considérant que le dit délai était de rigueur, et ne peut être prolongé par le tribunal, et que le demandeur ne peut plus maintenant demander la résolution du dit acte de vente, le défendeur étant devenu, après l'expiration du dit délai propriétaire irrévocable du bassin flottant à cale sèche (floating dry dock) vendu par le dit acte ;

" Considérant en outre que le demandeur n'a pas même prouvé avoir, depuis la date du dit acte, remboursé au défendeur aucune partie de la somme qu'il prétend lui avoir remise à compte du dit prix de vente, mais que la preuve constate au contraire que les deniers payés par le demandeur au défendeur depuis cette époque l'ont été sur et en déduction d'un compte courant et d'autres réclamations que le défendeur avait contre lui ;

" Considérant d'ailleurs que le dit demandeur n'aurait eu droit de demander la résolution du dit acte de vente que s'il eût payé au défendeur le montant intégral du prix de vente avant l'ex-

piration du terme fixé pour l'exercice du droit de réméré, un paiement partiel ne lui donnant pas le droit d'exiger la résolution, mais un simple recours en répétition;

"Considérant que le dit acte du 31 janvier 1877, a bien réellement opéré une vente entre les parties, et transféré au défendeur la propriété du dit bassin flottant, et que le fait que le demandeur serait resté en possession d'icelui après la vente ne change pas le caractère du dit acte ni n'affecte les droits des parties;

"Maintient la défense, et renvoie l'action avec dépens, etc."

Girouard & Co., for plaintiff.
Robertson & Co., for defendant.

THE LAW OF LIBEL.

To the Editor of the LEGAL NEWS:

SIR,—Allow me to offer, through the columns of your journal, some remarks on the Bill recently introduced by Mr. Irvine. In my opinion, the remedy which that Bill sought to apply, already exists, if not in the eye of the civil law, at least in the eye of the public law.

That the constitutional law of England, which forms part of the law public, has been introduced into, and is still in force in Canada, most clearly appears by the preamble of the Union Act, 1840, and the preamble of the British North America Act, 1867. The constitution acknowledges the right of the people to self-government, and the people entrust representatives with the power of making laws, and a certain number of those representatives are selected by the Governor General, or the Lieutenant-Governor, for the purpose of executing those laws. The latter, as well as the former, are responsible to the people for the discharge of their duties. In order, therefore, that the people may continue their confidence in members of Parliament and Ministers of the Crown or withdraw it, it is necessary that they should be made aware of all acts of members and Ministers relating to public affairs, and also of those acts which, though private in character, may affect their qualifications as public men. It is one of the attributions of the press to convey that information. Then the press partly derives its existence from the constitution, and its liberty, within constitutional limits, covers as wide a field as the liberty of the people, to whose interest it is devoted. Some disadvantage may, it is true, be imposed upon the individual whose character is attacked, but a greater advantage accrues to the people and more than counterbalances the particular wrong. The circumstances of the case repel the imputation of malice, which is the gist of the libel. But here malice is not to be taken in the vulgar or ordinary acceptation of the word, as meaning "wickedness"; it must be taken in its legal acceptation as meaning "an intent to do wrong." In the main the editor's action is not wrongful. The public interest prevails over the particular interest, and, consequently, public law prevails over private—*i. e.* civil law.

Thus do I mean to show that, under the circumstances contemplated by Mr. Irvine's bill, when truth is published for the benefit of the public, a newspaper editor is not actionable for damages on account of the wrong or tort which an individual is thereby made to suffer.

It may be objected that after Mr. Justice Ramsay's judgment in *R.* v. *McDougall et al.*, (18 L. C. J. 87), it was deemed necessary to enact 37 Vict., chap. 38, D., to enable defendants in criminal prosecutions for libel to plead truth as a justification, and that the same course must be followed with regard to the relevancy of the same plea in a civil suit. But it seems the positions are not the same. On the civil side, redress is sought for the wrong, while on the criminal side, the prosecution is for a liability to cause a breach of the peace. And in the latter connection only may we repeat the maxim, "The greater the truth, the greater the libel." However superior the public advantage may be to the particular disadvantage, it will not prevent a tendency to disturb the peace. The feelings of a certain individual have been injured, and he may be led to revenge. The principle governing the civil and criminal actions is quite different in each.

The position I take, and which, I humbly contend, cannot be easily assailed, is greatly strengthened by the late Chief Justice Rolland's ruling and direction to the jury in Gugy v. Hincks, in 1848, reported by Mr. Justice Mackay in the course of his judgment in *Mousseau* v. *Dougall et al.* (5 R. L. 446). There that learned judge gave it full and entire adhesion.

WILLIAM A. POLETTE, B.C.L.

Montreal, June 7, 1881.

RECENT ONTARIO DECISIONS.

Marriage when one party intoxicated.—In order to render void a marriage, otherwise valid, on the ground that the man was intoxicated, it must be shown that there was such a state of intoxication as to deprive him of all sense and volition, and to render him incapable of understanding what he was about.

Semble.—A combination amongst persons friendly to a woman to induce a man to consent to marry her, it not being shown that she had done anything to procure her friends to do any improper act in order to bring about the consent, would not avoid the marriage.

A marriage entered into while the man is so intoxicated as to be incapable of understanding what he is about, is voidable only, and may be ratified and confirmed.

Three years after the ceremony of marriage, which the man alleged he was induced to enter into while under arrest and intoxicated, an action was brought against him for necessaries furnished to the woman, and for expenses for the burial of her child, in which the question of the validity of the marriage was distinctly put in issue. The man signed a memorandum endorsed on the record, in which he admitted the existence and validity of the marriage, and consented to a verdict for the plaintiff in the action.

Held, that if the marriage was previously voidable it was thereby confirmed.—*Roblin* v. *Roblin* (Chancery, June 11, 1881—Decision by Proudfoot, V.C.)

RECENT U. S. DECISIONS.

Contract—Real Estate broker.—Defendant employed plaintiff to find a purchaser for real property. Plaintiff was to receive $500 for his services. Within a reasonable time plaintiff brought to defendant a purchaser willing to buy and pay the price. Defendant was satisfied with the purchaser, and entered into an agreement to convey to him the land. The purchaser declined taking the property on account of the state of the title.

Held, that plaintiff was entitled to recover, his right not depending on the validity of the title or the validity of a contract for the conveyance thereof between defendant and the purchaser.—*Gonzales* v. *Broad*, Supreme Court, California.—7 Southern L. R. 310.

Contract—Repudiation by purchaser.—Where the contract is for the manufacture and delivery of goods at a definite future time, and before such time the purchaser repudiates the contract, and notifies the vendor to that effect, such refusal is a breach of contract excusing the vendor from performance; and if he shows himself to have been ready, able, and willing to perform, it furnishes him with a good cause of action in damages for breach of contract.—*Eckenrode* v. *Chemical Company of Canton*, Court of App. Maryland, 7 Southern L. R. 311.

Stock-broker—Margins.—Where one employs a stock-broker to deal for him in margins, and deposits with him security, and knows no other person in the transaction, the relation is not that of principal and agent, but that which exists between two principals in a gambling transaction. In such case, where the employer is an infant, he can recover from the broker the money paid to and security deposited with him.—*Ruchizky* v. *De Haven*, Supreme Ct. Pa., 7 South. L. R. 348.

GENERAL NOTES.

The Chief Justice of Fiji, among other judicial dignitaries, has received the honor of knighthood.

In the list of Chief Justices of England, given on page 192, there was an omission of Lord Campbell, who held the office from 1850 to 1859. Lord Denman retired from office in 1850, not in 1851 as stated.

A metropolitan contemporary gives some interesting details as to the honorable forbearance of many lawyers to practice before relatives or even intimate friends upon the bench. The late Judge William Kent, it is said, never practised as an attorney before his father the Chancellor, nor did the present ex-Judge Jones ever practice before his father, who in his turn had refused retainers before his father, the first Judge Samuel Jones, in the last century. The son of the late Judge Samuel Betts accepted the clerkship of his father's Court rather than practice before him, but resumed his profession after his father's death. When Judge Rapallo's son has a case in his father's Court upon argument, his father always quits the bench. The late James T. Brady would never accept a fee in his brother's Court, not even if it was offered for an appearance before one of his brother's colleagues. Mr. William A. Beach pursues the same course in the Courts wherein his son presides. Judge Spier's son will not practice before his father. The late John S. Lawrence declined cases before his brother, of the Supreme Court. Some lawyers carry these ideas of professional delicacy so far as to be averse to trying or arguing cases before intimate friends who are judges.—*Alb. Law Journal*.