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JUDICIAL REFORMS.

Reference was made last week to the pamphlets on this subject by Messrs. Laflamme and Lareau. The former, while holding that the administration of justice is defective, does not think that the Commissioner's Report promises a remedy. "On propose des changements organiques, on suggère une législation compliquée étrangère à nos mœurs, à nos habitudes, et en contradiction directe avec les principes de notre droit constitutionnel sur bien des points." As to the proposed county courts, he shows that the judges would not have sufficient occupation. The suppression of the right of evocation is condemned as illogical and unjust. Mr. Laflamme highly approves, however, of the next suggestion, viz: that for the abolition of the right of appeal to the Privy Council. As to the three judge system, he takes somewhat similar ground to that held by Mr. Justice Ramsay, viz: that it is preferable there should be a hearing before one judge before the case goes further. "Maintenant, n'est-il pas mieux, dans l'intérêt des parties, qu'elles aient l'avantage d'une première appréciation de la preuve par un juge, et de sa décision sur le droit; d'avoir en quelque sorte l'analyse préalable et les propositions motivées et déjà discutées à soumettre à trois nouveaux juges, que d'avoir les trois juges réunis pour décider tout d'abord les questions de fait et de droit? Combien de questions nouvelles et sujettes à discussion le jugement ne soulève-t-il pas lui-même? Les déductions du juge de la preuve peuvent être erronées, l'application qu'il a faite des principes de droit, peut être fausse. La démonstration devient plus facile, et tous ceux qui ont de l'expérience en pareille matière admettront que le travail de l'avocat ou du juge, sur la révision, est beaucoup plus facile que lors de l'audition de la cause en premier lieu." In 1879, there were 1955 contested cases heard before a single judge. Of these 150 were taken to Review; so that in 1805 cases the parties were satisfied with the decision of a single judge, thereby saving the enormous labor of an examination of these 1805 cases by three judges. Mr. Laflamme makes an important suggestion on this subject. "S'il était possible de faire un choix convenable, parmi les juges de la cour supérieure, de ceux auxquels seraient dévolues ces fonctions de réviser les jugements de leurs collègues, lesquels siégeraient presqu'en permanence, il en résulterait un immense avantage pour tout le public et le barreau." But this would be forming a distinct intermediate court. Mr. Laflamme would also take a step backward to the old state of things, by allowing an appeal even where the judgment is confirmed in Review. This is certainly uncalled for, because the party has the privilege of going at once to appeal; and to permit him to go to both courts in succession would be simply adding to the delays which the writer elsewhere laments.

The suggestion of art. 139 of the Report meets with unqualified condemnation. "Une règle aussi compréhensive, aussi vague ne peut être acceptée, à moins de tout abandonner à l'arbitraire du juge. Quel vaste champ pour l'imagination, et le caprice d'un juge! Quoi! après la procédure et la preuve épuisée, le juge aura le droit, sous prétexte d'éclairer sa religion, de recourir à toutes les voies propres à découvrir la vérité. Mais quelles sont ces voies? Qu'est-ce que sa religion? et dans l'intérêt de quelle partie entrera-t-il dans ces voies? Une pareille théorie demanderait tout un code pour définir ces voies, pour les limiter, pour suivre le juge dans ses recherches." The proposition for the appointment of assistant judges is regarded as equally objectionable, nor does the scheme of an advocate general meet with more favor. Mr. Laflamme's paper is very vigorously written and should be read at length.

Mr. Lareau, in a carefully written pamphlet, goes over the same ground but arrives at different conclusions. The essentials of judicial reform are summed up by him as follows:

"1o. La réorganisation de la cour Supérieure. L'abolition des termes. L'audition des causes devant trois juges.

"2o. L'abolition de la cour de Révision. La suppression de l'appel au Conseil Privé.

"3o. L'organisation du ministère public pour les fins de la discipline des cours. Une loi sur la prise à partie. Une refonte de nos lois de procédure. Restreindre le pouvoir discrétionnaire des tribunaux. Améliorer le sort des pro-

fessions légales. Diminuer les déboursés de cour.

"4o. Permettre l'évocation et conserver l'appel des jugements interlocutoires. Faciliter les appels autant que possible, mais diminuer les degrés de juridiction et faire de la cour provincial d'Appel un tribunal en dernier ressort. Enlever à la cour Suprême sa juridiction d'appel dans les cas qui se rattachent à notre droit civil."

THE GRAY CONTEMPT CASE.

The *Albany Law Journal* quotes and apparently coincides in the opinion of R. (*ante* p. 266). It asks, "why should the sheriff have been deemed in *contempt* at all? * * * What he did may be a crime, but what is there in it in the nature of a contempt? * * * We should say that an editor who was credibly informed of such conduct and refused to give publicity to it, would be more blamable than one who should publish it."

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, September 7, 1882.

Before TASCHEREAU, J.

SHERIDAN v. TOLAN, and ANDERSON, intervenant.

Lessor and lessee—Property temporarily in possession of tenant.

A horse left in the possession of a tenant by a third party is not liable to seizure and sale by the landlord in payment of his rent, if the landlord had notice that the tenant was not proprietor of the horse.

The following was the judgment of the Court:—

"La Cour, etc....

"Considérant que le dit intervenant a établi son droit de propriété sur le cheval sous poil gris par lui revendiqué, et saisi en cette cause en vertu du bref de saisie-gagerie émis à la poursuite du demandeur, et qu'il résulte aussi de la preuve faite que le demandeur avait été duement informé, dès le moment où le dit cheval avait été mis chez le défendeur, que ce dernier n'en était pas le propriétaire, mais que le dit cheval appartenait à l'intervenant; et considérant qu'en droit, et vu cette notification, le dit cheval ne s'est pas trouvé affecté au privilége du locateur, (Art. 1622, C. C.; 24 L. C. Jurist, p. 150, *Beaudry* v. *Lafleur;* Paul Pont, Priviléges et Hypothèques, No. 122; Troplong, Priv. et Hyp. No. 151; 29 Laurent, Nos. 411 et suiv. 417 à 425; 3 Aubry & Rau, § 261, p. 142, note 22);

"Rejette la contestation du demandeur, maintient l'intervention et les moyens d'intervention du dit intervenant, le déclare propriétaire du dit cheval sous poil gris, annule la saisie faite du dit cheval, et en accorde main-levée à l'intervenant, le tout avec dépens," etc.

Intervention maintained.

Abbott, Tait & Abbott for intervenant.

Duhamel & Rainville for plaintiff contesting.

COURT OF QUEEN'S BENCH.

MONTREAL, May 27, 1882.

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

RHÉAUME (deft. below), Appellant, & MASSIE (plff. below), Respondent.

Action en séparation de corps—Evidence of ill-treatment justifying judgment of separation.

The appeal was from a judgment of the Superior Court, Montreal, Sicotte, J., Feb. 28, 1881, maintaining an action by the wife, respondent, for separation *de corps et de biens.*

The following grounds were assigned for the judgment:—

"Considérant en fait que la demanderesse a été injuriée par son mari, dans son caractère comme femme et comme mère, qu'elle a souvent été menacée par lui de sévices et même d'être tuée;

"Considérant en fait que le défendeur s'enivre souvent, et que dans ces circonstances il est grossier et brutal, d'une violence dangereuse;

"Considérant que le Jour de Paques en 1880 la demanderesse, pour éviter les risques et dangers de ces violences a laissé le domicile conjugal, pour se réfugier chez le père du défendeur, ensuite chez son propre père;

"Considérant en fait que la demanderesse a été bonne et bienveillante pour son mari et s'est toujours conduite comme une femme vertueuse;

"Considérant que vû ces faits de menace, et ces emportements de son mari, dans ses ivresses, il y a danger pour la vie de la demanderesse; et que la contraindre à retourner avec

son mari, serait l'exposer à être maltraitée à mort, à la première ivresse de ce dernier ;

" Considérant que la demanderesse a justifié sa demande en séparation ; déclare que la demanderesse est et sera séparée de corps et d'habitation d'avec le défendeur, et défend au dit défendeur de cohabiter avec la demanderesse et de la rechercher et troubler ; déclare aussi que la demanderesse sera séparée quant aux biens d'avec son mari, pour par elle en jouir à part, ensemble de ceux qui lui sont échus par le mariage et durant le mariage et qui pourront lui échoir par la suite ; déclare la communauté de biens existante entre les parties dissoute, pour être la dite communauté réglée et liquidée conformément à la loi."

The majority of the Court were of opinion that the above judgment was correct. The defendant had been guilty of violent conduct towards his wife soon after their mariage, and it was likely that hereafter he would go farther. Besides, proof of violence was difficult to make. It was very probable that the defendant was most brutal and violent when no one was present. The Court below having decided that the evidence was sufficient to justify a separation, the majority of this Court were not disposed to disturb the judgment.

The following dissentient opinion was delivered by

Ramsay, J. This is an action of *séparation de corps* by the wife. The declaration sets up, in effect, that " le défendeur s'est porté contre elle à de mauvais traitements, l'a souvent assaillie et frappée, avec ses poings et avec ses pieds ; qu'il use de boissons enivrantes ; que dans ces occasions, il est brutal et qu'il l'a menacé de la mort en diverses circonstances, et en particulier, le jour de Pâques 1880 ; qu'à cette date, le défendeur aurait battu la demanderesse, et l'aurait chassée de son domicile."

The evidence is far from supporting these allegations. On two occasions only is there any attempt to prove anything that could be called an assault. One of these occasions is reported in the evidence of the plaintiff's sister, Rosina Massie, a minor, living, it is to be presumed, in her father's house. She shows no particular disposition to lessen the gravity of what took place, and the assault is thus described :

" Il a pris deux douzaines de terrines dans lesquelles il y avait des cercles de fer (rond de poële), et il les lui a lancés dans les jambes." The other assault is established by the evidence of Félix Bédard. He thus relates the circumstance :

" *Question.*—Paraissait-il excité par la boisson ?

Réponse.—Il paraissait être en fête.

Question.—Qu'est-ce qu'il a dit à sa femme ?

Réponse.—Il a commencé à jouer avec moi ; sa femme était là et elle s'est mise à rire.

Question.—Qu'est-ce qu'il a fait ?

Réponse.—Il lui a demandé : " Qu'as-tu à rire," en se servant d'une expression grossière ; il l'a saisie par les bras en la secouant, et l'a retournée et lui a donné un coup de pied dans le derrière."

We are expected to presume that on another occasion the defendant threatened her with a knife. But it appears that it was tobacco that he was going to chop and not his wife.

It appears the defendant does make use of intoxicating drink and gets drunk occasionally. He is then violent in language, and it is proved that he used threats towards his wife of a not very formidable character. When the *terrines* were thrown *dans ses jambes* as mademoiselle Mélina tells us, " il s'est mis à maudire sa femme en disant : *tu peux remercier le bon Dieu que ta sœur soit ici ce soir ; c'est ce soir que tu en mangerais une volée.*" On another occasion it appears he said to her, " *tu ne passeras que par mes mains,*" or something like that. It is also proved that being drunk about Easter time, he said to his wife, " va-t-en avec ton père, je n'ai plus besoin d'une sacrée femme comme toi." This seems to be almost all that could be scraped together with the greatest malignity, to justify this action. On the other hand it appears that defendant is, except on the occasions, not very frequent, of his being drunk, a kind husband, attached to his wife, and very industrious. But it was argued there were other occasions, which cannot be proved, of ill-treatment. This is possible, but we cannot presume them. The husband too has shown the greatest desire to make up the difficulty, and the wife left to herself is not indisposed to return to her husband, but the father and mother interpose. This is fully proved. I don't think, then, that any *sévices* have been proved that would justify a judgment of separation, and this seems to be

the conclusion arrived at by the Court below. But it is said that the plaintiff had been *injuriée par son mari dans son caractère comme femme et comme mère.* These are very *galant* words, but they only express *en résumé* the facts I have detailed.

The principles which should guide Courts in pronouncing a sentence of *séparation de corps* are well put by Massol, p. 14.

I need hardly recall to mind the doctrine of "the antique world" as expressed by Pothier, for it is familiar to every lawyer. But even in those happy lands where the admirable institution of divorce subsists, and which are not yet thoroughly demoralized by it, the writers lay down very strict rules as being those on which only it should be granted. Daubanton, 397. I would therefore reverse.

Judgment confirmed.

C. L. Champagne for appellant.

Loranger, Loranger & Beaudin for respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, January 19, 1882.

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

BOWEN et al. (d..s. below), Appellants, and GORDON et al. (plffs. below), Respondents.

Procedure—Guarantee—Option.

A dilatory exception was filed, asking for security for costs. Security was given by the plaintiff, bnt no judgment was rendered on the exception. Held, that this omission not causing any injustice to the plaintiff, who did not complain in due time, was not ground for an appeal.

An undertaking to give a purchaser an introduction to a firm whose responsibility and standing should be satisfactory to him, meant satisfactory at that date, and did not imply in any way the continued solvency of the firm.

Where a commission was payable in cash or bonds at the option of the debtor, part payment in cash was making an option, and gave the creditor the right to demand the balance in cash.

The appeal was from a judgment of the Superior Court, at Sherbrooke, Doherty, J., maintaining the respondents' action for commission on the price of 4,000 tons steel rails.

The respondents were a firm of brokers in London, England, and the appellants were the general contractors of the Quebec Central Railway. In 1877, E. C. Bowen, one of the appellants, being in England endeavoring to purchase rails and fastenings for the Railway, applied to respondents to introduce him to a firm who would undertake to sell and deliver 5,000 tons of steel rails, etc., on terms settled by Bowen, and he gave them a letter agreeing to pay 2½ per cent. commission on the invoice amount in consideration of their introducing to him within two days a firm whose responsibility and standing were satisfactory to him. The commission was payable, at Bowen's option, either in cash or in the first mortgage bonds of the Quebec Central Railway at 50 per cent. of their nominal value. The respondents, under this agreement, introduced Bowen to the Railway Steel & Plant Company, of Manchester, from which he purchased to the extent of 4,000 tons. The action was brought to recover a balance of commission.

RAMSAY, J. Two questions arise on this appeal—one of a purely technical character. The respondents, plaintiffs in the Court below, live in England, and a dilatory plea was put in to suspend the action until plaintiffs should give security and file a power of attorney. It is difficult to see any very good reason for asking for the production of the attorney's power in a case like this. It is not a very gracious thing to do, for it presumes about the highest offence of which an attorney can be guilty, or at least gross indiscretion, and in this case it must have been abundantly plain to the appellants that the attornies had instructions. The pretention is, therefore, not very favorable, though, strictly speaking, I think appellants had a right to be notified of the production of the power, and also that, according to the rules of procedure, the dilatory exception should have been disposed of in some way. But there is another rule equally clear, that where defects of practice that do not affect the substantial rights of parties are passed over, it is deemed to be by consent. Now, what do we find here? The dilatory plea is filed, it produces its effect, appellants plead to the merits, and go to proof. This brings up the whole issues; so the most that can be said is that the Court below has failed to adjudicate on a preliminary plea which ought to have been dismissed, with or without costs, in the discretion of the Court. Appellants' grievance, therefore, is confined to

a possible loss of costs of a very trifling amount. This is no ground for appeal.

On the merits a more important question arises. Appellants pretend that the commission claimed is a fraud, that respondents agreed to introduce them to a responsible firm in England, from whom they could purchase steel rails; that they were really in compact with another person called Hillel, with whom they shared a commission of a like amount obtained from the vendors. This is neither pleaded nor proved. Appellants have another pretention, that the work was not performed, and that the Steel Plant Company was not a firm of *responsibility* and *satisfactory standing*. These last questions might, I think, arise on the general issue; but I don't think it is the understanding of the words cited that the Company should remain solvent. The undertaking was to give the appellants an introduction to persons whose standing would be satisfactory to them at the time, and no more, and respondents are only asking for the commission on what was executed. The existence of the bargain is more than proved. It is partly executed.

Another question raised by appellants is that they were not given the option of paying in bonds. This was not pleaded, and the appellants have already paid part of the commission in cash. Of itself this would, probably, prevent them from exercising their option anew, on the principle that having *optés*, they cannot change.

The Court is of opinion that the appeal must be dismissed with costs.

Judgment confirmed.

Hall, White & Panneton for appellants.
Ives, Brown & Merry, for respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, June 30, 1881.

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

CLEMENT es qual. (curator), Appellant, & FRANCIS (petr. below), Respondent.

Procedure—Interdiction—C.C. 328,332.

A judgment of interdiction which has been pronounced by the Prothonotary, is subject to revision by the Court only, and not by a judge in chambers.

The appeal was from the judgment of a Judge in Chambers, and also from a judgment of the Superior Court.

One Mary Power had been interdicted, and Clément, the appellant, had been appointed by the prothonotary, curator to the interdict. The respondent, by a petition in chambers in the Superior Court, complained of Clément's appointment as having been made contrary to the advice of the majority of the persons present at the family council. On the 27th January, 1881, the Judge in Chambers annulled the interdiction.

The appellant thereupon petitioned the the Superior Court to set aside the judgment in chambers, but the Court declared that it had no jurisdiction to revise this judgment.

RAMSAY, J. I think a judge in chambers had no jurisdiction, and that the decision of the Prothonotary could only be reversed by a judgment of the Superior Court. It will be observed that this case does not fall within the operation of art. 1139, C. C. P. which has been taken from cap. 78 C. S. L. C. Sect. 25, and most incorrectly taken if it was intended to have the same effect. The Statute provides for the action of the Prothonotary "in cases of evident necessity," to avoid a delay by which *a right might be lost* or *a wrong sustained*. The code confers purely and simply "all the powers conferred upon the Court or a judge thereof" subject to revision by a judge. It required some ingenuity to make such a jumble. The prothonotary can alone do what a judge cannot do alone in chambers; but the judge can revise a proceeding equal to the action of the Court although he could not initiate it. The case before us turns on other articles to be found in the C. C. They are Art. 328 and 332. The former of these articles appears to give an absolute jurisdiction to the prothonotary exactly similar to that given to the judge, and the latter article provides, that the exercise of this jurisdiction shall be controlled by revision by the Court—we are left in doubt whether by three judges or by one, but at all events by the *Court*, however held, and not by a judge in vacation.

I would therefore reverse.

The judgment of the Court is as follows:—

"La cour, etc....

"Considérant que, par l'article 328 du Code Civil, la demande en interdiction d'une personne en demence peut être faite devant la cour de son domicile, ou un juge d'icelle, ou devant le protonotaire de la dite cour;

"Et considérant que lorsque l'interdiction a été prononcée hors de cour, la décision peut être révisée par la cour;

"Et considérant que l'article 1339 du Code de Procédure ne s'applique qu'aux procédés adoptés en vertu des différents titres de la partie du dit code de Procédure;

"Et considérant que les procédés adoptés pour faire interdire la dite Mary Power ne sont pas des procédés qui ont eu lieu en vertu du Code de Procédure, mais en vertu de l'article 328 du Code Civil, et qu'un Juge en chambre n'avait aucune juridiction pour infirmer la décision du protonotaire, et mettre de coté l'interdiction de la dite Mary Power;

"Et considérant qu'il y a erreur dans le jugement prononcé par un juge en Chambre, le 26 Janvier 1881;

"Cette cour casse et annule le dit jugement du 26 Janvier 1881; et condamne l'intimé à payer à l'appelant les frais encourus tant en cour de première instance, que sur cet appel."

Judgment reversed.

Duhamel, Pagnuelo & Rainville for Appellant.
R. & L. Laflamme for Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, March 6, 1882.

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

COUTURE (plff. below), Appellant, and FOSTER (deft. below), Respondent.

Procedure—Filing Exhibit.

Where a marriage license was not filed at the proper time by the clergyman sued in damages, and was afterwards irregularly produced at enquête, the Court should not have excluded the exhibit altogether, but should have allowed the party an opportunity to file it, after due notice, on payment of costs.

The appeal was from a judgment of the Superior Court at Sherbrooke, Doherty, J., March 27, 1880, dismissing the appellant's action, by which she claimed $500 damages from the respondent, the Rev. John Foster, a clergyman of the Church of England, for having unlawfully celebrated the marriage of appellant's minor daughter with one George S. Cleveland. It was alleged that the marriage in question had been performed without the previous publication of bans, and without having first obtained the consent of the appellant, or of any tutor or other person with power to consent to the marriage. It was also alleged that at the time of the marriage the daughter, Emélie, was a minor residing with her mother, and that since the marriage she had left her mother's house and had resided with Cleveland, thereby depriving the plaintiff of her services.

The action was met, first, by a *défense en fait*, and secondly, by a plea admitting that the respondent did, on the 12th May, 1879, unite in marriage George S. Cleveland and Emélie Couture, and that these persons represented to him that Emélie was of age, and he supposed that she was so; that he performed the marriage under the authority of a license issued by the Lieutenant-Governor, and that he had not been guilty of any negligence in the premises.

The judgment dismissing the action in the Court below was as follows:—

"The Court having heard the parties by their respective counsel, as well on plaintiff's motion to reject the deposition of G. O. Doak, a witness for the defendant in this cause, and the exhibit therewith filed, as on the merits, examined the record and the objections to evidence at *enquête*, and deliberated,

"Doth grant said motion upon the grounds thereof, and doth reject from the record said deposition and exhibit with costs;

"And, on the merits, considering that, as against the express *défense au fond en fait* and positive denegation of the plaintiff's allegations pleaded to this action, the plaintiff had failed to prove the material allegations of her declaration, and more particularly her marriage with the late Couture, her alleged deceased husband;

"Considering that the exception *en droit* secondly and subsidiarily pleaded by defendant constitutes no admission of said essential allegation;

"Considering that plaintiff's claim by this action is limited and restricted by said declaration to the value of her alleged daughter's services for the balance of her minority, to wit: for a period of about six months, and that no specific value, or any value whatever, is put upon said services by said declaration, nor any such value claimed thereby;

"And considering that plaintiff hath failed to make proof of such value for any period of time,

with sufficient accuracy or certainty to enable this Court by its judgment to assess or award any definite sum of money as payment or compensation for such services, even if plaintiff had otherwise shown herself entitled to such payment or compensation, and that plaintiff hath wholly failed to establish any right of action in the premises, or any definite or specific amount or sum of money for which judgment can be given in her favor, doth dismiss this action, and considering that it results from the evidence of record that the defendant did not take the precautions required and proper preliminary to celebrating and performing the marriage ceremony in question in this cause, this action is so dismissed without costs."

Dorion, C. J. This is an action of damages by the mother of a minor against a clergyman in the Townships, for marrying her daughter while under age. There is no difficulty as to the fact that the appellant's daughter was a minor. The case turns upon another ground. The clergyman produced at *enquête* a license for the marriage of the parties, and there is a statute which says that a minister who in good faith marries a party having a license is exonerated from all damages by reason of the person not being of age or other cause. There can be no damages against the minister, therefore; but there is this difficulty,—the license was not produced with the plea, but only at the *enquête*, and it was produced irregularly, and without notice to the plaintiff. A motion was made at the final hearing to reject the paper. The Court below granted the motion and rejected the exhibit, but it also dismissed the action on the ground that the appellant had failed to prove any damages. The Court below should have allowed the defendant to file the license on giving notice to his opponent. This was not done, and the case is now brought into appeal. The Court here does not think that it ought to reverse the judgment, especially as there is very slight evidence of damage. The respondent, there can be no doubt, had a license. However, to show that parties cannot violate the rules of procedure with impunity, the Court will grant the respondent no costs on the appeal.

Ramsay, J. This is an action against a clergyman for marrying the minor child of appellant without appellant's consent, and that the said respondent knew that the said minor child had not the required consent. Article 157 C. C. does not take away this right of action. It only gives to the Crown an action for a penalty not exceeding $500. The only effect, then, Art. 157 can have on the action of damages is, perhaps, to take away any claim for vindictive or exemplary damages.

The action is met by a plea of general issue, and by an exception setting up that the respondent married the parties under special license, and not even knowing that the child Emélie Couture was not of the age of 21 years, and believing that she was of mature age, as declared in the license. The exception further specially denied that any damages had been suffered by the mother, and averred that the marriage was an advantageous one.

The respondent did not file the special license with his plea, but produced it with the deposition of Mr. Doak on the 29th January, 1880. Subsequently, on the 25th and following days of February, the appellant examined eight witnesses in rebuttal.

After the inscription of the case for hearing on the merits, appellant moved to reject the testimony of Mr. Doak and the license produced by him.

The Court by its judgment rejected Mr. Doak's deposition and the license, and dismissed appellant's action without costs, on the ground that the only cause of damages alleged was loss of the services of the child, and that no loss thereby was proved.

Strictly speaking, this judgment was probably well founded, and, moreover, I don't consider that in a case of this sort the mother has any proprietary right to the services of a daughter over 20 years of age, except when she is domiciled in her house. In other words, loss of services is not a measure of damages at all. But the evidence was allowed to go greatly beyond the question of services, and it is fully established that the appellant suffered the damages of mental suffering and disappointment in her affections, which forms the true ground of damages in a case like this. The Court might, therefore, have been justified in allowing an amendment of the declaration in order to take into consideration the evidence of this sort of damage.

But there is another difficulty: the license

which has been rejected was a full answer to the demand, and I don't think it ought to have been rejected. It was irregularly filed, it is true, but this was only a question of costs, and the Court ought to have granted respondent leave to file it immediately. The statute of the 35 Vic. cap. 3, sec. 6, is clear on this subject: "No minister who has performed any marriage ceremony under the authority of a license issued under this act, shall be subject to any action or liability, for damages or otherwise, by reason of there being any legal impediment to the marriage, unless, at the time when he performed such ceremony, he was aware of the existence of such impediment." But even without that section I should be inclined to think that a license, where there was no collusion or fraud, would be a good justification.

It has been said that we could not look at the evidence of Doak, or at the license, because it was rejected from the record, and that there was no appeal from the judgment rejecting it. We don't think that the appellant can gain anything by the severance of the question of the validity of this portion of the evidence from the main question. If the Judge in the Court below had said he did not attach any weight to this evidence, and that he decided the case without taking it into consideration, we certainly should not have been prevented from treating it differently.

There was a question raised at the argument of what is denied by the general issue, and what is admitted by a special plea, but I don't think the matter comes up.

I would confirm, and I concur somewhat reluctantly, in the order as to costs of this appeal.

The judgment in appeal is *motivé* as follows:

"The Court, etc.

"Considering that there is no evidence of the special damage alleged by the said appellant;

"Considering that it does not appear that the said respondent was aware, at the time of the marriage in question, that the said Emelie Couture, daughter of appellant, had not reached the age of majority;

"Considering that there was a marriage license duly signed, authorising the said respondent to marry the said Emelie Couture and one George Samuel Cleveland;

"Considering that the existence of the said license was duly pleaded, but that it was not regularly produced and filed;

"Considering that the said appellant did not object to the said irregularity in filing the said license, but examined several witnesses subsequent to the said irregular filing, and that the said license ought not to have been dismissed by the judgment of the Court below without notice of the motion to reject the said license, so that the said respondent might have moved for leave to file the same regularly;

"But considering that there is no error in the dispositive of the judgment appealed from, to wit, the judgment rendered by the Superior Court for Lower Canada, sitting at Sherbrooke, in the District of St. Francis, on the 27th of March, 1880, doth confirm said judgment without costs."

Judgment confirmed without costs.

L. C. Belanger for appellant.

Ives, Brown & Merry for respondent.

W. H. Kerr, Q.C., counsel.

RECENT ENGLISH DECISIONS.

Insurance—Fire Policy—Subrogation:—After the date of a contract for the sale of a house which was insured against fire, and before completion of the purchase, the house was damaged by fire, and the insurance company, in ignorance of the contract, paid the vendors for the damage done. The purchase was subsequently completed, the vendors receiving the full amount of the purchase money, and also retaining the moneys paid to them by the insurance company. On an action by the insurance company to recover the moneys paid by them to the vendors, *held*, that the insurance company were not entitled to recover, the principle applicable to such a case being that of subrogation. (Q. B. Div. April 4, 1882.)—*Castellain* v. *Preston*.

GENERAL NOTES.

ERRATUM.—On page 273, line 34, column 1, in Mr. Justice Ramsay's letter, "lawyers gain by protracted legislation," should read "litigation."

Sir Fletcher Norton, whose want of courtesy was notorious, happened, while pleading before Lord Mansfield on some question of manorial right, to say, "My lord, I can illustrate the point in an instant in my own person. I myself have too little *manors*." We all know it, Sir Fletcher," interposed the judge with one of his blandest smiles.