

wit, that he should be paid 10 per cent. of the collections as his compensation. The action was for a recovery of \$5,000 upon an insurance of the life of the plaintiff's husband, now deceased.

The right, in general, of a litigant to change his attorney at pleasure, has been repeatedly affirmed. *In re Paschal*, 10 Wall. 483, 493-496; *Dodge v. Schell*, 20 Blatchf. 517, 12 Fed. Rep. 515; *In re Wilson*, 12 Fed. Rep. 235, 238, and cases there cited. In the present case not much progress has been made in the disposition of the cause. A demurrer to the complaint has not been argued, and the plaintiff's proceedings have been stayed until security for costs on her part is filed. The plaintiff herself resides in Scotland, and is understood to be in poor circumstances. Her attorney in fact, who undertook the prosecution of her interests here, desired to be relieved of his charge; and a new attorney in fact has been substituted, by whom this application for a change of attorneys in the litigation has been promoted.

Contracts like that in the present instance, for the compensation of attorneys to be paid from the amount recovered, and contingent upon a recovery, are not to be construed as debarring a plaintiff from any change of attorney, nor as giving the original attorney an absolute control of the litigation to the end. Such a construction would be impolitic in its results, and cannot be sustained. The agreement should be regarded as providing for the mode of compensation only, and subject to such reasonable changes and provisions as subsequent circumstances may make proper. The attorney has a lien upon the papers in his possession for his contingent fees, in case of final recovery, to the extent of the proportion of services already rendered. The motion for a substitution should be granted, upon the plaintiff's stipulation being filed with an order entered herein declaring the present attorney's lien *pro rata* upon any moneys or judgment hereafter recovered, to the extent that may be hereafter determined, should the plaintiff be successful in the suit; and that notice of such lien be given to the defendant. This will probably be a satisfactory security to the present attorney; if not, I will consider any further application in that respect in his behalf.

BATTELL v. WALLACE.

(Circuit Court, S. D. New York. February 14, 1887.)

1. LIBEL—ONE LIBEL DOES NOT JUSTIFY ANOTHER.

A libel upon the plaintiff cannot be justified by a previous wholly independent libel upon the defendant; and the latter cannot even be given in evidence in mitigation of damages where any considerable interval has elapsed.¹

2. SAME—PLEADING TRUTH IN JUSTIFICATION.

Where the libel complained of is that defendant published that "the wretched idiot [meaning the plaintiff] set about to injure us [meaning defend-

¹See *Shattuc v. McArthur*, 29 Fed. Rep. 136, and note.

ant] by trying to cast doubt upon some of the early pedigrees as they appeared in the register, [meaning defendant's book of pedigrees of horses,]" and defendant in his answer alleged in detail the instances in which the plaintiff had tried to cast doubts on the earlier pedigrees in defendant's register, *held*, that these allegations were in effect averments of the truth of the alleged libelous matter, and set forth the specific instances referred to in the general assertion. Such matter was competent, under Code Civil Proc. N. Y. §§ 535, 536, allowing defendant to prove mitigating circumstances, and facts not amounting to a complete defense, tending to mitigate or reduce plaintiff's damages, if the facts are set forth in the answer.

D. McG. Means, for plaintiff.

B. F. Tracy, for defendant.

BROWN, J. Without questioning the general principle invoked by the plaintiff that a libel upon the plaintiff cannot be justified by a previous wholly independent libel upon the defendant, and that the latter cannot even be given in evidence in mitigation of damages where any considerable interval has elapsed, I am not satisfied that the matter sought to be stricken out from the answer upon this motion is so independent of the libelous matter complained of and set forth in the complaint as to justify me in striking it out, or in holding that it could not possibly be given in evidence upon the trial. The complaint alleges that the defendant published, among other libelous matter, the following: "The wretched idiot [meaning the plaintiff] set about to injure us [meaning defendant] by trying to cast doubt upon some of the early pedigrees as they appeared in the register, [meaning defendant's said book of pedigrees of horses,]" etc.

The eleventh paragraph of the answer sought to be stricken out purports to be a statement in detail of the instances in which, as the defendant alleges, the plaintiff did, as the alleged libelous matter asserts, seek to cast doubts on the earlier pedigrees set forth in the defendant's register. In effect, it would seem to be an averment of the truth of the alleged libelous matter, setting forth the specific instances referred to in the general assertion. Under the Code this is proper to be pleaded either in justification or in mitigation of damages. Code Civil Proc. §§ 535, 536; *Hatfield v. Lasher*, 81 N. Y. 250; *Gould v. Weed*, 12 Wend. 12; *Willover v. Hill*, 72 N. Y. 36; *Fink v. Justh*, 14 Abb. Pr. (N. S.) 107; *Corning v. Corning*, 6 N. Y. 103; *Jeffras v. McKillop & S. Co.*, 2 Hun, 351.

Motion denied.

YOUNG v. ROSSI.¹

WILLARD v. SAME.

(*District Court, E. D. New York. March 24, 1887.*)

FALSE IMPRISONMENT—NO ESPECIAL LOSS—RECOVERY.

On the evidence, *held* that, as no loss resulted to the libelants from the admittedly wrongful detention on board defendant's vessel, \$100 would be sufficient remuneration for the infringement of their personal rights.

In Admiralty.

Goodrich, Deady & Goodrich, for libelants.

Butler, Stillman & Hubbard, for respondent.

BENEDICT, J. These cases can be disposed of together. In each case the libelant seeks to recover of the defendant damages for false imprisonment. The wrongful detention of the men on board his vessel by the defendant is admitted. But it is not a case for large damages; no loss resulted to the libelants from their detention. If \$100 be paid each libelant, a sufficient remuneration will be received for the infringement of their personal rights and any inconvenience to which they were put.

Let each libelant have a decree for \$100, and his costs.

UNITED STATES v. POULSON.²

(*District Court, E. D. Pennsylvania. March 18, 1887.*)

PENSIONS—AGENT'S BOND—SURETIES—INTEREST.

In an action by the United States against a surety on an official bond, where no demand had been made upon the surety to make good his principal's default, interest will be charged only from the day of service of the writ.

Sur Rule for a New Trial.

This was an action brought by the United States against John G. Poulson, a surety on the official bond of F. F. Burmeister, who was pension agent at Philadelphia from February, 1867, to May, 1869. The bond was joint and several, and was dated March 13, 1867. Burmeister's last monthly statement showed a balance due him by the United States of \$4,531.26. No demand was made upon the surety to make good his principal's default prior to the issuing of the writ, in the latter part of 1886. The jury returned a verdict for the United States for \$13,006.27, with 17 years' interest, making together \$26,656.27, whereupon the de-

¹Reported by Edward G. Benedict, Esq., of the New York bar.

²Reported by C. B. Taylor, Esq., of the Philadelphia bar.