

SELECTIONS.

whereby, in the exercise of their duty of suppressing an unlawful assemblage of slaves, the plaintiff's slave was killed. Dill. on Mun. Corp., § 773; *Butterick v. Sewell*, 1 Allen, 172; *Kimball v. Boston*, id. 417; *Pesterfield v. Vickers*, 3 Coldw. 205; *Ready v. Mayor, etc.*, 6 Ala. 327; *Dorgan v. Mobile*, 31 Ala. 469; *Richmond v. Lang's Adm'r.*, 17 Gratt. 375. The rule as to the liability of cities for the acts of members of their fire department is stated in *Fisher v. Boston*, 104 Mass. 87; 6 Am. Rep. 196. "In the absence of express statute therefor, municipal corporations are no more liable to actions for injuries occasioned by reason of negligence in using or keeping in repair the fire engines owned by them, than in the case of a town house or public way." See, also, *Hafford v. New Bedford*, 16 Gray, 297; *Eastman v. Meredith*, 36 N. H. 284; *Bigelow v. Randolph*, 14 Gray, 541; *Wheeler v. Cincinnati*, 19 Ohio St. 19; 2 Am. Rep. 368; *Jewett v. New Haven*, 38 Conn. 368; 9 Am. Rep. 382; *Torbush v. Norwich*, 38 Conn. 225; 9 Am. Rep. 395; *Ogg v. Lansing*, 35 Iowa, 495; 14 Am. Rep. 499; *Hayes v. Oshkosh*, 33 Wis. 314; 14 Am. Rep. 750; *Elliott v. Philadelphia*, 75 Penn. St. 342; 15 Am. Rep. 591. For a careful discussion of the principle involved in these cases see *Mazmilian v. Mayor*, 62 N. Y. 160; 20 Am. Rep. 468.

The doctrine of constructive assault received an important illustration in the case of *Hegarty v. Shine*, 12 Ir. L. T. Rep. 109, decided by the Queen's Bench Division of the Irish High Court of Justice on the 18th of June last. The action was brought by a young woman against her paramour, for breach of promise of marriage and assault. The alleged assault consisted in this: The plaintiff permitted defendant to have illicit intercourse with her, supposing him to be in sound health, but he was at the time suffering from contagious venereal diseases, which fact he concealed from plaintiff, and through the illicit intercourse infected her therewith. This was claimed to be a constructive assault, but a majority of the court held otherwise on the ground that the injury complained of was directly consequent on a wilful act of immorality on the part of plaintiff, and no cause of

action arising *ex turpi causa* can be maintained. The principal English case on this subject is *Regina v. Bennett*, 4 F. & F. 1005, where the prisoner, who had slept with his niece with her consent, and communicated to her a syphilitic disorder, was held guilty of an assault. In *Regina v. Sinclair*, 13 Cox's C. C., the defendant, knowing that he had a venereal disease, induced a girl to have connexion with him without informing her of the fact, and communicated the disease to her. It was held that an indictment for inflicting actual bodily harm could be sustained by those facts. The court in the principal case disagrees with both of the decisions cited, but by a divided bench. The cases are, however, distinguishable from that class where a woman consents to intercourse under the impression that she is receiving medical treatment, such as *Reg v. Flattery*, 13 Cox's C. C. 385; *Reg v. Case*, 4 id.; *Don Moran v. People*, 25 Mich. 356; 12 Am. Rep. 183; or where one gives to another a food containing substance injurious to health, such as *Commonwealth v. Stratton*, 114 Mass. 303; 19 Am. Rep. 350, and *Commonwealth v. Burke*, 105 Mass. 376; 7 Am. Rep. 531. The distinction is that in those instances last cited the female consented to one thing and the prisoner did another, while in the principal case the woman was consenting partly to the immoral act.—*Albany Law Journal*.

We are afraid our excellent contemporary, the *Chicago Legal News*, has "put its foot in it." The *Solicitors' Journal* having innocently said something about its being difficult for the "popular mind to grasp the idea of the majesty of the law as personified, for instance, in the American courts, which, according to the description of a recent writer, consists of 'an elderly gentleman, sitting on a cane bottom chair and expectorating thoughtfully,'" the *Legal News* reads "our learned and respected contemporary" a lecture, and informs it among other things that, "There is no country in the world where the judges of inferior courts of record preside with more dignity and indulge in less wrangles with attorneys, and are more respected by the bar and people, than in America." This is all well