SELECTIONS.

pearing the next day in Court in plain clothes. In the meantime his lordship declined to recognise the High Sheriff, just as the Court fails to 'see' counsel when not robed. At length the High Sheriff conceded the point at issue, and made his appearance in Court in the uniform of a Captain of Volunteers.

Of course this action on the part of Mr. Justice Hawkins has excited, and will excite. ridicule in certain quarters; but the learned Judge was quite right. The Judges represent the Sovereign at the Assizes, and the High Sheriff is bound to attire himself as though he were in the royal presence. This compliment or duty is not paid to the Judges personally, but to Her Majesty, as represented by her commissioners. But, apart from rule, there can be no question that the state and pomp wherewith Judges are received at Assizes impress the popular mind with the sanctity of justice, and the respect due to the law and the administrators of the law. The antiquity of our law, its unbroken tradition, its permanent power, strike upon the imagination, when the pomp and circumstance of eight centuries are year by year presented to the eye. The splendour of a Norfolk reception is preferable to Derbyshire simplicity in the opinion of all who believe in effects produced upon the popular mind by the outward majesty of the law.

In Tomppert's Ex'rs v. Tomppe t, 13 Bush (Ky.), 326, it is held that a marriage procured by fraud is voidable only at the election of the party defrauded. The party who commits the fraud is bound, and remains so until the party deceived has made his or her election, and will thereafter be bound or not, according to the election made. It is laid down by the text writers, that all marriages procured by force or fraud are void, for the element of mutual consent is wanting, which is essential to every contract. Schouler's Domestic Relations, 35; 2 Kent's Com. 76. But Bishop (1 Bish. Marr. & Div., § 214) says: "We may presume that the party guilty of the wrong would not be permitted, so far to take advantage of it, as to maintain a suit of nullity on that ground. The other

party may, if he choose, waive his objection and thereby render the marriage good." This is the doctrine of the principal case. See, also, State v. Murphy, 6 Ala. 765. Bishop, however, says that the authorities are clear to the general conclusion that fraud, error or duress, may render the marriage void. See Harford v. Morris, 2 Hag. Con. 423; Portsmouth v. Portsmouth, 1 Hag. Ecc. 355; Jolly v. McGregor, 3 Wils. & S. 85, Burtis v. Burtis, Hopkins, 557; Scott v. Shufeldt. 5 Paige, 43; Perry v. Perry, 2 id. 501; Clark v. Field, 13 Vt. 460; Hull v. Hull, 15 Jur. 710; Robertson v. Cole, 12 Tex. 356. It is said, however, that a voluntary cohabitation after knowledge of the fraud or error will cure the defect. Hampstead v. Plaistow, 49 N. H. 84. These marriages, therefore, in a certain respect, are rather to be considered as voidable than void, and in some works they are treated under the head of voidable. See Rogers' Eccl. Law, 2d ed., 643. But the great weight of authority is that until the innocent party has consented, the transaction is incomplete and the ceremony is to be regarded as a mere nullity. 1 Bish. Marr. & Div., § 215; Respublica v. Hevice, 3 Wheeler's Cr. 505; Tarry v. Browne, 1 Sid. 64; Fulwood's Case, Cro. Car. 482.

In Pollock's Administrator v. Louisville, 13 Bush (Ky.), 221, it is held that for wilful negligence of policemen appointed by a city in making arrests upon charges of felony, the city is not liable. Greenwood v. Louisville, at page 226 of the same volume, the city is declared not to be liable for injuries caused by the negligence of firemen appointed and paid by it under a law requiring it to maintain a fire department, while in the discharge of their duty. The general rule is that policemen appointed by a city are not its agents, but the agents of the State, while engaged in those duties which relate to the public safety and the preservation of public order. For that reason, it has been held that a city is not liable for assault and battery committed by its policemen, though done in an attempt to enforce an ordinance of the city; nor for an arrest made by them which was illegal for want of a warrant; nor for their unlawful acts of violence