joined that the plaintiff would be glad to take those words back; that the plaintiff responded substantially that he would not; and that Gilman thereupon informed the plaintiff that he should report him.

On cross-examination, Gilman testified that he thought that the plaintiff, when speaking of the assassination, said it might stop the further effusion of blood.

Against the objections of the plaintiff, the defendants also introduced evidence tending to prove that the blacksmith shop was three miles from Newport village, where three of the defendants were; that Gilman, in about twenty minutes after his conversation with the plaintiff, told it to the defendant Wilson; that Gilman and Wilson went to Newport village and informed the four defendants of the plaintiff's declarations concerning the assassination; that, about two hours afterwards, the four defendants proceeded to the blacksmith shop and did the act proved by the plaintiff; that there was great excitement in the public mind upon the receipt of the news of the assassination.

The plaintiff reasonably objected to the admission of the alleged declarations of the plaintiff, made to Gilman that day: but the presiding judge ruled that the plaintiff's declarations made that day, concerning the assassination of the President, might be given in evidence *de bene esse*, it having been stated by the defendants' counsel that they should prove the same had been communicated to the defendants before their arrest of the plaintiff.

Against the objections of the plaintiff, the defendants also introduced evidence tending to prove that, after the confinement of the plaintiff in the hotel, he was taken by them, on the same day, to a public meeting of the citizens, called at the town-house, at which a moderator and a clerk were chosen, and acted officially; that, at the meeting, a vote was passed that the plaintiff be discharged upon his taking an oath to support the Constitution of the United States: and that the plaintiff voluntarily took such oath and was thereupon discharged.

The defendants also introduced evidence tending to show, that, before arresting the plaintiff, telegraphic communication, relative to the plaintiff's declarations concerning the assassination, was had with the provost-marshal at Bangor, who replied by telegraph, that he should be arrested and held; that thereupon the defendant Shaw, then an acting deputy sheriff, with three other defendants, acting under his orders, proceeded to make the arrest; and that they honestly believed that they had a legal right to do what they did, and had no malice towards the plaintiff.

As to the four defendants proved to have been present (and the other, if found to have participated), the presiding judge instructed the jury that the defendants had shown no legal justification for their acts, and must be found guilty; that the only question for the jury was the amount of damages; that the plaintiff claims damages on three grounds:—

1. For the actual injury to his person and for his detention;

2 For the injury to his feelings, the indignity, and the public exposure; and,

3. For punitive or exemplary damages.

That they were bound to give, at all events, damages to the full extent for the injuries to the plaintiff's person and for his detention.

That, as to damages for the second and third grounds, it was for the jury to determine, on the whole evidence, whether any should be allowed, and the amount.

The presiding judge explained to the jury the nature and grounds of such damage, and instructed them, *inter alia*, that they could only consider the evidence introduced by the defendants under the second and third heads above set forth, and in mitigation of any damages they might find under either or both of said heads, if, in their judgment, those facts did mitigate such damages; but that they could not consider them under the first head.

The jury acquitted O. B. Rowe, and found a verdict of guilty against the other defendants, and assessed damages in the sum of $6.46. Whereupon the plaintiff alleged exceptions.

W. H. McCrillis, for the plaintiff, contended, *inter alia*, that the language of the plaintiff was not a sufficient provocation It was not personal to any of the defendants: *Corning* v. *Corning*, 2 Selden 97; *Ellsworth* v. *Thompson*, 13 Wend. 658.

Sufficient provocation cannot be proved in mitigation when the assault and battery were deliberately committed. The assault must accompany the provocation before the blood has time to cool. The question is, was there time for a reasonable man to reflect, and not whether the defendants continued in a state of passion: *Cope* v. *Sullivan*, 3 Selden 400; *Avery* v. *Ray*, 1 Mass. 11; *Lee* v. *Woolsey*, 19 Johns. 319; *Willis* v. *Forrest*, 2 Duer 318.

Words cannot constitute justification. Words can never be sufficient provocation. They may provoke extreme anger, and the anger be admitted in mitigation. But, if the blood has time to cool, the assault is regarded as deliberately done and cannot be mitigated. Any other rule would be subversive of the order of society.

L. Barker, for the defendants.

(*To be continued.*)

DIGEST.

DIGEST OF ENGLISH LAW REPORTS.

FOR MAY, JUNE AND JULY, 1869.

(*Concluded from Vol. V. page 27.*)

Ignorance—*See* Bond.

Illegal Contract.

Property pledged to the keeper of a brothel to secure payment for wine, &c., consumed in a debauch in said brothel, cannot be recovered by the pledgor of the pledgee.—*Taylor* v. *Chester*, L. R. 4 Q. B. 309.

Implied Grant or Reservation—*See* Easement; Way.

Indemnity, Act of—*See* Conflict of Laws.

Indictment—*See* Assault.

Injunction.

The publication of any document which