

NEGLIGENCE—PROXIMATE AND REMOTE DAMAGE.

the English criminal law. Do we hinder the attainment of that object by shutting the mouths of the accused, or, to be more accurate, by not allowing them to give evidence on oath?

Now, a vital principle of our law is the presumption of innocence, and that being so, no man can be lawfully convicted except by the weight of the evidence adduced against him. But the mere denial of the accused person on his oath would not and ought not to greatly influence the jury. When there is an almost irresistible temptation to commit perjury the testimony is worthless. Let us suppose a case in which, if the accused person is convicted, he will be sentenced to ten years' penal servitude. For ten years he will be cut off from human society and from his nearest and dearest relations. He is sworn, and, without the slightest conscientious scruple, falsely avers that he is guiltless. But then we shall be told that there will be the cross-examination to elicit the truth. Well, if the accused is a stupid person, the cross-examination is likely to damage his case whether he is innocent or guilty. If the accused is a smart person, he need not dread the cross-examination. His game is an easy one. His position is not like the position of any other witness. He does not care a jot about the danger of a prosecution for perjury. He is only solicitous to escape from a present peril. If he is acquitted, the verdict of the jury will be a testimony that he has spoken the truth. If he is convicted, and has a heavy sentence passed upon him, he is no worse off on account of his flagrant perjury.

The lips of an accused person are not sealed. We do not refer to the privilege of making a statement after conviction, and before the Court passes sentence. We say that, throughout the trial, the accused speaks by the mouth of his counsel. The witnesses for the prosecution are cross-examined, and the witnesses for the defence examined, according to the instructions of the accused. Moreover, the counsel for the prisoner, in his address to the jury, has the opportunity of giving the prisoner's explanation of the circumstances; and we do not think that the oath of a person in jeopardy of penal servitude would be of more value than his unsworn statement.

On the whole we see no reason for changing our system, whilst we see grave objections to accused persons giving evidence on oath.—*The Law Journal*.

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One of the most interesting cases on the law of negligence which has been determined for some time is the *Metallic Compression Casting Company v. Fitchburg Railroad Company*, decided by the Supreme Judicial Court of Massachusetts, and to appear in volume 109 of the Massachusetts Reports. It will be found in the American Law Times Reports (N. S.) vol. 1. p. 135.

On the 24th of January, 1870, a little before midnight, the plaintiff's manufacturing establishment was discovered to be on fire. The buildings were situated in Somerville, about fifty feet south of the track of the Fitchburg railroad. Two fire engines were brought upon the ground, belonging to the Somerville fire department, and one from Cambridge. Not being able to procure a supply of water otherwise, they laid the hose across the railroad track, under the direction of the chief engineer of the Cambridge fire department, and obtained a supply from a hydrant on the north side of the track. The water was, by means of the hose, applied to the fire and diminished it, and would probably have extinguished it in a short time but for the acts of the defendants. At that time a freight train came along from the west, and though its managers had sufficient notice and warning, and might have stopped and had no occasion for haste, they paid no attention to the hose, but carelessly passed over it with their train and thereby severed it, and stopped the water. They injured the hose so much that it could not be seasonably repaired, and thereby the plaintiff's buildings were consumed. They did not delay to give time for uncoupling the hose, which would have delayed them but a few minutes. The railroad was crossed by another at a grade a few hundred feet before the place where the hose was severed; and the train was not stopped before the crossing, as required by the Gen. Stats. c. 63, § 93.