MAGISTRATES, MUNICIPAL & COMMON SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

NEW TRIALS IN CRIMINAL CASES.—It is not desirable to grant rules *nisi* for new trials in criminal cases where there is no probability of their being made absolute, inasmuch as it is calculated to excite expectations not likely to be realized, and to raise doubts as to the promptness and certainty of punishment. (*The Queen* v. *Finkle*, 15 U. C. C. P. 453.)

MANSLAUGHTER—MASTER AND SERVANT—PROVIDING INSUFFICIENT FOOD AND LODGING—DOMINION AND CONTROL—MORAL RESTRAINT—DYING DECLARATION—EVIDENCE.—Upon an indictment for manslaughter it appeared that the deceased was a person of weak intellect, and that at a time when she was very bad, but when there was no evidence that she was under the impression of impending death, she made a statement to a witness, which, two hours afterwards, he took down in writing, putting questions to the deceased as he wrote, and that upon reading it over to her on the same night she made no observation. At eight o'clock on the night following, when she knew she was dying, the statement was read over to her by another witness, who made observations as he went on, and put questions to the deceased from the statement, sometimes in a leading form, all of which she answered. Upon being asked why she did not run away, she said her mistress locked the door, and with that exception made no alteration in the statement previously taken down. Upon objection for the prisoner that the statement above could not be read in evidence, upon the ground that it was not voluntary, but in answer to leading questions and was improperly obtained.

Held, that the question whether a dying declaration is admissible, is for the consideration of the judge who tries the case, but that the weight of it, is for the jury, and that the above was properly admitted.

The case for the prosecution was that the deceased, being the domestic servant of the prisoner, who kept a lodging-house, had died in consequence of insufficient food and unwholesome lodging provided for her by the prisoner, or of the combined effect of those things, and a course of ill-treatment.

It appeared upon the evidence that the deceased was a person of low intellect, and who had lived for about eighteen months in the service of the prisoner; that during the whole of that time she had been very cruelly treated, badly lodged, and badly fed by the prisoner; that on the 21st of February, 1865, she had been taken to her aunt's by a person who was not called as a witness, and had died in the workhouse on the 27th of the same month from the effects of insufficient nourishment. But it also appeared that she was twenty-three years of age when she entered the prisoner's service; that she had acted rationally as a servant, and had occasionally gone out on errands; that in August her aunt had given the prisoner warning for her, but that, upon the prisoner saying that she had agreed to stay on, her mother and aunt had allowed her to do so; that she was about, and opened the door to a witness on the 13th of February, and that when she came to her aunt's on the 21st February she was on foot.

The judge, in summing up, drew the attention of the jury to the distinction between the cases of children, apprentices, and lunatics, under the care of persons bound to provide for them, and the case of a servant of full age, and directed them that if they were satisfied upon the evidence that the prisoner had culpably neglected to supply sufficient food and lodging to the deceased during a time when, being in the prisoner's service, she was reduced to such an enfeebled state of body and mind as to be helpless, or was under the dominion and restraint of the prisoner and unable to withdraw herself from her control, and that her death was caused or accelerated by such neglect, they might find her guilty.

Held, that the direction was right; but that the conviction must be quashed, for that it appeared that the proximate cause of the death of the deceased, for which only the prisoner on this indictment would be responsible, was the insufficient supply of food, and that the prisoner was not criminally responsible for that, as there was no sufficient evidence that the deceased had lost the exercise of her free will, and was unable to withdraw herself from her mistress's dominion and control. (*Reg.* v. *Charlotte Smith*, 13 W. R. 816.)

JUSTICE OF THE PEACE—CON. STATS. U. C., CH. 124, SECS. 1, 2—PLEADING.—Is an action against a justice of the peace for a penalty for not returning a conviction to the Quarter Sessions, it is no objection to the declaration that the plaintiff sues for the Receiver General, and not for her Majesty the Queen, inasmuch as suing for a penalty for the Receiver General, for the public uses of the province, is in fact suing for the Queen. Besides Con. Stats. U. C. ch. 124, authorize a party to sue *qui tam* for the Receiver General. *Held*, also, that the defendant, having actually convicted and imposed a