pledge himself to go for more than nominal damages, it will be assumed that the plaintiff wants only to have the question of right decided; under these circumstances, in the absence of any proof on the part of the defendant of his pleas in confession and avoidance, the plaintiff would be at once entitled to the verdict which he desires; he has nothing to prove either as to his case or as to the amount of damages, and the defendant begins (*Chapman* v. *Rawson*, 8 Q. B. 673.) That the statement of the plaintiff's counsel will not be accepted as conclusive appears from *Bastard* v. *Smith*, 2 M. & R. 129. This was an action of trespass for diverting water; the only plea was one in justification under a custom. The plaintiff's counsel announced that his client sought to recover substantial damages, but Tindal, C. J. said, "No special damage is averred in the declaration beyond that arising from the simple fact of trespass complained of, viz., digging a trench of a certain length and depth; and indeed it appears from what is alleged as to the equity procedings (and which is not denied on the other side), that substantial damages are not in the contemplation of these parties. I think it falls within the general rule that as the affirmative lies on the defendant, he has the right to begin." This decision shows that in order to settle who shall open when the affirmative issue is on the defendant, the Judge must in the exercise of his discretion, and having regard to all the circumstances of the case, determine whether substantial damages are *bonâ fide* the object of the suit.—*Law Times*, July 18, 1868.

CRIMINAL LIABILITY WHERE THERE IS NO CRIMINAL INTENTION.

The legal maxim of *Actus non facit reum, nisi mens sit rea*, though in criminal cases of general, is not of universal application, since there are many violations of the criminal law in which it forms no excuse whatever. To instance only the well known principle so often declared from the judgment-seat when some poor wretch, in extenuation of his conduct, asserts that when he did the act for which he has been prosecuted he was drunk—that drunkenness is no excuse for crime, it will at once be understood that the absence of a criminal intention is not always an excuse for an act which the criminal law forbids. No doubt "it is," as said by Lord Kenyon in *Fowler* v. *Paget*, 7 T. R., 514, "a principle of natural justice and of our law that the intent and the act must both concur to constitute the crime." And as remarked by Erle, C. J., in *Bruckmaster* v. *Reynolds*, 13 C. B., N. S., 68, "a man cannot be said to be guilty of a delict unless to some extent his mind goes with the act." But, as observed Mr. Broom in his Legal Maxims, "the first observation which suggests itself in limitation of the principle thus enunciated is, that whenever the law positively forbids a thing to be done, it becomes thereupon *ipso facto* illegal to do it willfully or in some cases even ignorantly; and consequently the doing it may form the subject-matter of an indictment, information, or other criminal proceedings *simpliciter*, without any addition of the corrupt motive." The observations of Ashurst, J., in *Rex.* v. *Sainsbury*, 4 T. R. 427, puts the doctrine in a very clear point of view. He says: "What the law says shall not be done, it becomes illegal to do and is therefore the subject-matter of an indictment without the addition of any corrupt motives. And though the want of corruption may be the answer to an application for an information which is made to the extraordinary jurisdiction of the court, yet it is no answer to an indictment where the judges are bound by the strict rule of law." Where a statute in order to render a party criminally liable requires the act to be done feloniously, maliciously, fraudulently, corruptly, or with any other expressed motive or intention, such motive or intention is a necessary ingredient in the crime; and no legal offence is committed if such motive or intention be wanting; but where the enactment simply forbids a thing to be done, motive or intention is immaterial so far as concerns the legal criminality of the act forbidden.

A recent illustration of this important principle is to be found in the case of *Rex* v. *The Recorder of Wolverhampton*, 18 L. T. Rep. N. S. 395. That was a case which arose out of a violation of the 20 & 21 Vic., c. 83 (Sale of Obscene Books Prevention Act), the 1st section of which enacts that it shall be lawful for any two justices upon the complaint that the complainant has reason to believe that any obscene books are kept in any house, &c., for the purpose of sale or distribution, complainant also stating that one or more articles of the like character have been sold, distributed, &c., so as to satisfy the justices that the belief of the complainant is well founded, and upon such justices being also satisfied that any of such articles so kept for any of the purposes aforesaid are of such a character and description that the publication of them would be a misdemeanor and proper to be prosecuted as such, to give authority by special warrant to any constable or police officer into such house, &c., to enter and to search for, and seize all such books, &c., as aforesaid found in such house, &c., and to carry the articles so seized before the justices issuing the said warrant, and such justices are then to issue a summons calling upon the occupier of the house, &c., to appear within seven days before any two justices in petty sessions for the district, to show cause why the articles so seized should not be destroyed; and if such occupier shall not appear at the said time, or shall appear, and the justices shall be satisfied that such articles or any of them are of a character stated in the warrant, and that they have been kept for any of the purposes aforesaid, it shall be lawful for them to order the articles so seized, except such of