

## The Legal News.

Vol. I. JULY 20, 1878. No. 29.

### JUDICIAL LIABILITY.

The case of *Lange v. Benedict*, a report of which appears in the present issue, is interesting as a very recent re-examination of the law concerning judges and their liability for judicial acts. Lange had been convicted of an offence for which the punishment prescribed by statute was \$200 fine or one year's imprisonment. The defendant, Judge Benedict, presiding at the court, sentenced him to both the fine and imprisonment. Lange paid the fine, and then applied by writ of *habeas corpus* for release from imprisonment. This was a perfectly reasonable and natural course, and it might seem that even the judge who had made the blunder could not find anything in it to object to. But the writ being returned before him while yet holding the term of the court at which the conviction was had, Judge Benedict set aside the former sentence, and re-sentenced the plaintiff to one year's imprisonment. The case was carried to the Supreme Court of the United States, by which the Judge's act was declared to have been without authority of law, and the release of Lange was ordered. By this time the latter seems to have become angry at the treatment to which he had been subjected, and he brought an action against the Judge, setting up the facts of the case, alleging that the act of the Judge was wilful and without authority, and claiming damages for false imprisonment. At the outset his pretensions appear to have met with some favor, for the defendant having demurred to the action, on the ground that he was not liable for the consequences of any act done by him as a judge of a court of general jurisdiction, the demurrer was overruled at Special Term. At the General Term, however, this judgment was reversed and the demurrer sustained, and the N. Y. Court of Appeals, by the judgment reported elsewhere, has affirmed this decision. A judge is, therefore, held to be absolved from the consequences of illegal acts, even wilfully done, and it will be seen by the authorities cited in the judgment that the doctrine is not new.

It will be noticed that the plaintiff did not allege malice on the part of the Judge. Such an allegation, however, under the ruling of the Court, would not prevent the declaration from being demurrable, and we can see no great difference in substance between an illegal act wilfully done, *i. e.*, a wilful abuse of the powers of the court, and an illegal act done with malicious intent. Our contemporary the *Albany Law Journal*, remarks: "Perhaps such a rule is necessary to secure independence to the judiciary; but it would seem that a person injured by a gross abuse of judicial power, such as the act committed by defendant was, should not be remediless." This is true. Under our system, however, the remedy is clear. The terrors of a public impeachment are at the command of the oppressed, and are quite sufficient to make the most obstinate judge listen to reason. But happily the occasion for such a remedy will seldom arise, and certainly it is one which should not be adopted without grave cause.

### EVIDENCE OF EXPERTS AS TO FOREIGN LAW.

English judges, in the more recent cases, have looked with some jealousy upon the evidence of experts upon questions of foreign law. One of the leading authorities on the subject is *The Sussex Peerage case*, 11 C. & F. 85, where the House of Lords permitted the late Cardinal Wiseman, as a Roman Catholic bishop and co-adjutor to a vicar apostolic in this country, to give evidence as to the matrimonial law of Rome. Lord Langdale based his decision on this ground: "He is engaged in the performance of responsible public duties, and connected with them; and in order to discharge them properly he is bound to make himself acquainted with this subject of the law of marriage. That being so, his evidence is of the nature of that of a judge." In *Van Donckt v. Thelluson*, 8 C. B. 812, the Court of Common Pleas allowed the law of Belgium as to a promissory note payable in that country to be proved by a London hotel-keeper, who was a native of Belgium, and had formerly carried on business at Brussels as a merchant and stockbroker. Mr. Justice Maule observed: "Applying one's common sense to the matter, why should not persons who may reasonably be supposed to be ac-