

DIGEST OF ENGLISH LAW REPORTS.

at the hands of the administrators of the law; and when we allow ourselves to be cheated with the delusion that the simple and degraded, or the offensive and coarse-grained, do not deserve the highest protection of the law, we approach a point of timeserving, which is but one degree removed from actual corruption, of which we already begin to hear charges, in some quarters, but we trust wholly without foundation.

We regret, in this case, the affirmation of the principles of the charge in the court below by a court of such high character, although done in a mode, and for reasons, which show the high dignity and purity of the tribunal, and do also show, as it appears to us, that an unfortunate misapplication of the very principle upon which the case is decided, must have occurred in the court below. We know the learning and ability of the court from which the decision comes; and we are always proud to welcome its members among our most esteemed friends; but we cannot shut our eyes to the fact, that the substantial damages in this action were blinked out of sight, and disregarded by the jury, upon grounds which are flagrantly in violation of the leading doctrine of the decision, viz., that actual and compensatory damages cannot be denied upon any ground of provocation short of an actual justification of the assault, battery, and false imprisonment, which was not attempted in this action.

The testimony offered and received in mitigation of damages in this action, might well enough have been received, upon the question of punitive or exemplary damages, but it was not of a very satisfactory character even upon that head. The only portion of it which seems to afford any just apology for the flagrant misconduct of the defendants, was the stupid blunder of the provost-marshal in directing the plaintiff to be "detained." This had some fair tendency to vindicate the good faith of the defendants in arresting the plaintiff. But what can be said of their after-conduct in forcibly carrying the plaintiff three miles, and dragging him before a town meeting, and sentencing him to take an oath to support the Constitution of the United States? They might, with the same propriety, have sentenced him to be hanged, or burned to death. And if they had done so and carried the sentence into execution, and been indicted for murder, they should, so far as we can see, upon the principle of this decision, have been permitted to show the plaintiff's provoking bravado talk in mitigation of punishment—or possibly to reduce the verdict from murder to manslaughter.

It does not seem to us that such evidence should have been permitted to go to the jury, upon either the first or second point made in the plaintiff's request to charge, and not upon the third, except so far as it tended to show that the defendants acted under a misapprehension of the law, and in good faith; for punitive or exemplary damages are not given with any reference to the plaintiff's misconduct, within the limits of the law, but solely on account of the malice and wanton misconduct of the defendants, and to admonish them, and others in like case, not to repeat the misconduct. Is there anything in the plaintiff's folly and bravado, naturally calculated to induce the defendants to believe they had any legal right to deal with him in the manner they

did? Was not then the charge of the court, and the result of the trial, directly calculated to encourage such abuses of right, such flagrant breaches of the law? Was not the conduct of the defendants malicious, wanton, and intentionally insulting and abusive? Can there be more than one opinion on these subjects? And was not the charge in the court below, the verdict of the jury, and the overruling of the exceptions, all calculated to encourage such conduct, and to discourage such actions? If so, can we fairly expect parties suffering like indignities to appeal to the tribunals for redress? And will not the result of such experiences, in courts of justice, sooner or later, end in a resort to force in all such cases? These are plain questions, but they are fundamental to the very existence of free states and private liberty, both of person and speech.

I. F. R.

—*American Law Register.*

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FOR AUGUST, SEPTEMBER AND OCTOBER, 1869.

(Continued from Vol. VI. page 54.)

ACTION—*See MONEY HAD AND RECEIVED.*ADMINISTRATION—*See EXECUTOR AND ADMINISTRATOR.*

ADMIRALTY.

A vessel with her anchor down, but not actually holden by and under the control of it, is "under way," within the meaning of the Admiralty Regulations, 1858.—*The Esk*, L. R. 2 A. & E. 350.

*See COLLISION.*AGENT—*See PRINCIPAL AND AGENT.*ASSIGNEES—*See COSTS*, 1.ASSIGNMENT—*See EQUITABLE ASSIGNMENT.*ASSUMPSIT—*See MONEY HAD AND RECEIVED.*BAILEMENT—*See NEGLIGENCE*, 1.BANK—*See BANKRUPTCY*, 4; *NEGLECTANCE*, 1.

BANKRUPTCY.

1. In July, A. voluntarily gave to B., his principal creditor, a bill of sale of all his goods, &c., with a power to enter and sell if, &c. In October, B. entered and sold the goods for less than his debt. In November, A. was adjudged a bankrupt on his own petition, and the creditors' assignee sued B. for the conversion of said goods, and also for money had and received. *Held*, that as there could be no relation to an act of bankruptcy previous to the bankrupt's own petition, neither count could be maintained.—*Marks v. Feldman*, L. R. 4 Q. B. 481.

2. J. deposited bills of lading for cotton and coffee with G., as collateral security for G.'s acceptances. J. afterwards authorized G. to sell the cotton and coffee and receive the pro-