

DIGEST OF RECENT DECISIONS IN U. S. COURTS—CORRESPONDENCE.

would naturally affect his action, and assented to the double employment. But when such knowledge and consent are shown he may recover from each party. *Bell v. McConnell*.—1b. (See also *Kersteman v. King*, ante *infra*, vol. 15, p. 140.

BILLS AND NOTES — AGREEMENT AS TO LIABILITY.

An accommodation indorser cannot set up, in a suit against him by his indorsee, that there was an agreement between them at the time of putting their names on the paper that such indorsement should constitute a joint, and not a successive, liability. *Johnson v. Ramsay*.—Albany L. J., Jan. 14.

MUNICIPAL LAW—DEFECTIVE STREETS.

The council of a city had exclusive power over the streets, highways, bridges, etc., in the city, and to make repairs thereof. The council held stated meetings once in two weeks, and special meetings were authorized at any time upon the call of the mayor or five councilmen. Held, that notice to a councilman of a defect in a bridge in the city was notice to the city rendering it, in case of a neglect to repair, liable to one injured by the defect. *Logansport v. Justice*.—1b.

PUBLIC OFFICER—BOND—SURETIES.

An action cannot be maintained against a constable and his sureties on his official bond, for a trespass committed by him in taking the goods of a stranger on an execution issued against the property of another person. The remedy in such case is by an action of trespass or trover against the officer personally, and against the plaintiff in the execution if he be a party to the trespass.

For any breach of official duty by a constable, his official bond is responsible; this is the extent of liability assumed by the sureties. If he commit a wrong, not in the discharge of his official duty, he is personally liable, but his sureties cannot be held responsible therefor; it is not within the terms of their contract. *State of Maryland v. Brown*.—1b.

CONTEMPT—JUSTICE OF THE PEACE.

A justice of the peace sitting in the court for the trial of small causes, engaged in the trial of a civil cause, has no power to commit to prison as a punishment for a contempt committed in open court. *Rhinehart v. Lance*.—1b.

WOMEN MAY BE ARBITRATORS.

Under a statute making no provision that men only shall be appointed arbitrators, held that a married woman could be appointed third arbitrator by the other two arbitrators and that the fact that the appointment was made in the absence of one of the parties would not invalidate the award as to that party. *Evans v. Ives*.—1b.

LIBEL—INDICTMENT.

A publication is libelous if, without charging on indictable offence, it falsely and maliciously

imputes conduct tending to injure reputation, to cause social degradation, or to excite public distrust, contempt or hatred. An indictment is good if it charges the publication as matter not libelous *per se*, but charges such publication with proper inducement and inuendoes to set forth and explain the defamatory statements of the publication. *State v. Spear*.—Crim. Law Mag., Jan. 1.

MURDER.

The word "deliberately," as used in the statute defining murder in the first degree, means in a cool state of the blood as contra distinguished from a heat of passion. But the term "passion" in this connection is not limited to that heated state which comes from and is produced only by some legal provocation. *State v. Lewis*.—1b.

CORRESPONDENCE.

Bylaws—Imprisonment with hard labour.

To the Editor of the LAW JOURNAL.

SIR,—A by-law of the Town of Woodstock was passed in 1866, which provided that any person convicted of an offence under it, might in default of payment of fine, be imprisoned in the common jail with hard labour.

Under the Municipal Law then in force, 29 30 Vict., chap. 51, section 246, sub-section 8, this by-law was legal, and within the power of the municipality to pass, and has never been repealed or changed.

In 1881, a person was convicted under it, and the conviction, was appealed on the ground (amongst others) that the by-law was now bad for imposing imprisonment with hard labour, (see *Regina v. Nancy*, 46 U. C. R., 153), but the point was not decided by the learned chairman, as the conviction was bad upon other grounds.

Now, are by-laws, valid at the time of passing, imposing hard labour, still valid; and can this punishment be inflicted under them; and if so, could the Ontario Government require such by-laws to be rescinded? If these by-laws are valid, the result is, that one municipality may inflict the punishment of imprisonment with hard labour, while a municipality created since the passing of the British North America Act, in the same county, cannot inflict the same punishment, for the same offence. This point is mentioned in the argument of Mr. Hodgins, in the case quoted above.

WOODSTOCK