

NOTES OF RECENT DECISIONS.

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Malicious prosecution—Reasonable and probable cause.

A trading firm, by making false statements to a mercantile agency as to their capital, obtained a high and incorrect rating, on the strength of which they got credit for goods, which they handed over to a relative in payment of an antecedent debt, and, within a month after, a writ in insolvency issued against them. The vendor of the goods on discovering the facts, and being so advised by counsel, prosecuted the firm on the charge of obtaining goods by false pretences.

Held (per Torrance, J.) that there was reasonable and probable cause for the prosecution, and an action of damages would not lie. *BOWES v. RAMSAY*; 4 Leg. News 227.—Quebec.

Contract—Interpretation—Insolvency.

Where a lease, made during the existence of the Insolvent Acts, was to be terminated by the insolvency of, or the making of an assignment by, the tenant, *held (per Torrance, J.)* that the making of a voluntary assignment by the tenant after the repeal of the Insolvent Acts, did not terminate the lease.—*BUDLEY ET AL. v. BOND, Ib.*—Quebec.

Corporation—Illegal arrest.

An arrest under the Vagrant Act (32-33 Vict. [Can.] c. 28), for indecent exposure, cannot be made without warrant after an interval of time following the offence, and where such unauthorized arrest was made, the city was held liable (*per Torrance, J.*) in damages for the act of its policeman.—*WALKER v. THE CITY OF MONTREAL, Ib.* 215—Quebec.

Conditional sale—Sale of horse on trial—Death of horse before trial.

The plaintiff sold a horse to the defendant upon a condition that the horse should be tried

by the defendant for eight days, and returned by him at the end of that time if he did not think it suitable for his purposes. The horse died within such eight days without fault of either party. *Held (by Denman, J.)*, that there was no absolute sale at the time of the horse's death, and therefore that the plaintiff could not recover the price: *ELPHICK v. BARNES*, 49 L. J. Rep. Q. B. 698.

Issue of writ same day as cause of action—Fiction of priority.

The statement of claim alleged that on July 2, and before the issuing of the writ, the defendant sat and voted as a member of the House of Commons without having made and subscribed the required oath, and that the plaintiff sued for the penalty of 500*l.* Demurrer on the ground that the statement of claim was bad in law, as it alleged that the defendant sat and voted on the day on which the writ was issued.

The defendant, in person, contended that the issue of the writ was a judicial act; and that the writ must, therefore, be taken to have been issued before the commission of the alleged offence, in accordance with the fiction of law that a judicial act dates from the earliest period of the day on which it is done.

On the other side it was contended that the issue of the writ was not a judicial act.

The Court (Denman, J., and Williams, J.) held that the fiction of law could not override the positive averment that the sitting and voting took place before the issue of the writ.—*CLARKE v. BRADLAUGH*, 1 Q. B. Div. June 21.

Negligence—Injury to person stopping upon street from fall of defective wall.

A person lawfully passing along a street, who stops on the door-sill of a house fronting on the street, for the purpose of adjusting his shoe, and while thus occupied, his head being within the lines of the street, without any negligence on his part, is injured by a brick falling on his head, in consequence of the dilapidated condition of the wall of the house, has a right of action against the owner of the house for the injury inflicted. *Deford v. State*