The Legal News.

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WOMEN IN THE COURTS.

The Judiciary Committee of the U. S. Senate hold the view that women are admissible to practice as barristers in the United States Courts. A Bill went before the Committee recently, providing that women who have been members of the bar for three years in any State or territory, shall be admitted to practice in the Supreme Court of the United States, and that no person shall be excluded from practising as attorney or counsellor before any Court of the United States, on account of sex. Holding the view that there is now no law excluding females from the bar in the courts mentioned, the Senate saw no necessity for the passage of the Bill, and accordingly reported adversely to it.

The friends of the measure regard this action of the Senate as an evasion of the issue, because, in point of fact, the Courts do not admit women to practice, and the U. S. Supreme Court has refused to entertain any application for admission in behalf of a woman. She is in the same position, therefore, as if expressly excluded by the law. It is generally conceded that if all restrictions were removed, not a dozen women in the Union would avail themselves of the liberty granted. The easiest solution of the difficulty would probably be to grant the privilege requested, and the anxiety to appear in the Courts would then fade away.

A QUESTION OF DAMAGES.

In the State of Nebraska a singular enactment is to be found on the Statute book, by which the owner of live stock is allowed "dcuble the value of his property injured, killed or destroyed" on a railroad track, in case the value be not paid within thirty days after demand on the company therefor. A case came before the Supreme Court of the State lately, in which a demand was made upon a railroad company under the above Statute, but the Court held that the enactment was repugnant to the Constitution. The excess beyond the value of the property, the Court held, could not be regarded in any other light than a penalty, not resting in contract, but a penalty or fine for the purpose of punishment. The penalty or fine in the present case was given by the Statute to the party claiming damages for the accidental loss of his property. But there is a provision of the Constitution which declares that "all fines and penalties shall be appropriated exclusively to the use and support of common schools."

For this, among other reasons, the Court pronounced the law unconstitutional. It would, indeed, be hard to find any reasonable ground for so extraordinary a piece of legislation. One would be disposed to conjecture that it was framed by a legislature largely bucolic, and that the authors of the provision had in view a profitable means of disposing of old or useless cattle. The slaughter which railroads would make under such circumstances would in all probability be prodigious, and a twelve foot fence on either side of the track would be insufficient to prevent it. A Brooklyn clergyman, a Sunday or two ago, denounced from the pulpit the administration of justice as tending to weigh heavily upon the poor, while the rich criminal generally managed to escape unpunished. The Nebraska enactment referred to seems to err in the opposite direction, for it fleeces companies for the benefit of cattle owners;—unless, indeed, the former be considered the poorer of the two, as holders of unprofitable shares and bonds too often find themselves at the present day.

THE LATE JUDGE DORION.

By the death of Mr. Justice V. P. W. Dorion, which occurred somewhat suddenly on Sunday last, the Bench of the Province of Quebec has lost an able and efficient member. The deceased, who was a brother of Sir A. A. Dorion, the present Chief Justice of the Court of Queen's Bench, was born at Ste. Anne de la Perade on the 2nd October, 1827, and was consequently only in his fifty-first year. He came to Montreal about the age of fifteen, was admitted to the practice of the legal profession in due course, and, in partnership with his distinguished brother, the present Chief Justice, enjoyed for many years a very extensive and

important practice. In 1875 he was raised to the Bench of the Superior Court, and was at first appointed to the Quebec District, but on the death of Judge Mondelet he was transferred to Montreal, where the same vigor, decision, and talent which had marked his career at the bar, distinguished his too brief administration of judicial office. The bar of Montreal, on Wednesday, unanimously adopted a resolution expressing their appreciation of "the ability, ntegrity, learning, and invariable affability" with which the deceased discharged his duties, and these words aptly describe the estimable qualities of the learned Judge.

REPORTS AND NOTES OF CASES.

COURT OF REVIEW.

Montreal, May 31, 1878.

MACKAY, DUNKIN, RAINVILLE, JJ.

MACKAY v. ROUTH *et al.*, and BANK OF MONTREAL, T. S.

[From S. C. Montreal.

Concurrent Garnishment.

This was an inscription in Review from the judgment reported ante, page 161.

MACKAY, J. A seizure of moneys being made in the hands of the Bank of Montreal, the defendants contested it, because there was a previous *saisie-arrêt* in their hands against plaintiff at the suit of Duncan Macdonald. This was demurred to, and the Judge *a quo* had found the demurrer well-founded. The Court here could not but confirm the judgment, as the *saisie-arrêt* referred to was not disposed of, and there was nothing to show that anything would ever come from that proceeding of Macdonald.

Judgment confirmed.

Abbott & Co., for plaintiff.

Loranger & Co., for defendants.

SUPERIOR COURT.

Montreal, May 31, 1878.

JOHNSON, J.

LEFUNTUN v. BOLDUC et al.

Malicious Prosecution—Whence Malice and want of Probable Cause may be inferred.

Malice and want of reasonable and probable cause may be inferred from the acts, conduct and expressions of the party prosecuting, as for example, the existence of a collateral motive, such as a resolution on his part to stop the plaintiff's mouth.

JOHNSON, J. The plaintiff brings an action for damages against the defendants for malicious prosecution under the following circumstances:—He possessed a property in the Township of Milton, and had given an obligation to Bolduc for $400, on which Bolduc sued him, and got judgment by default. The present plaintiff made a *requête civile* to get that judgment set aside, and was unsuccessful, and Bolduc brought the land to sale, and became the purchaser for $55. The plaintiff then presented a petition *en nullité de décret*, which is still pending. The foundation of the *requête civile* was alleged want of service; and it is the affidavit which the the plaintiff made in support of the *requête* that was said to be false, and upon which the three present defendants, Bolduc, François Thibault, the bailiff who made the return of service, and Charles Thibault, the attorney for Bolduc in that action, caused him to be arrested for perjury. When the case came before the magistrate, the prisoner—the present plaintiff—who was brought before him to be committed for the offence of perjury, was discharged for want of proof of his identity with the person who had made the affidavit. The action as against the attorney has been discontinued, and the two other defendants have pleaded, Bolduc admitting the arrest at his instance, and the bailiff saying that he gave evidence by compulsion, but both denying any malice or want of probable cause,—and also denying that the plaintiff had suffered any damage. They also plead that the *requête civile* was dismissed after consultation and evidence.

The only points now before me are the malice and want of probable cause for arresting this unfortunate man on a charge of perjury. They are both essentials of the plaintiff's action, and certainly the contestation on the *requête civile* and between the same persons, at least as far as Bolduc and the plaintiff are concerned, must be taken as decisive of the question whether there had been a legal service or not. But it is also undeniable that there may have been a legal service, and the plaintiff may nevertheless have been in good faith in swearing there was not, and may not therefore have committed perjury. That, however, does not touch the real point in the case, which is whether these two defendants acted maliciously, and not *bona fide*, in bringing the charge of perjury. The

dismissal by the magistrate on a question of identity would not amount to much; and under any circumstances the action of a magistrate or of a grand jury would only be a presumption that the charge was unfounded; not that it was brought through malice. There are, however, other circumstances to be considered in this case. I am strongly of opinion that, though the judgment on the *requête civile* shows that there was evidence of a legal service, the plaintiff has been perfectly honest in setting up that there was not, and in swearing to the fact. It is a very suspicious circumstance as to the time at which this accusation was brought, that the petition *en nullité de décret* had been filed, after Bolduc had got this property for $55, and I find in a work published last year, and highly spoken of in the reviews, "Patterson on the Liberty of the Subject," something that bears very closely on this subject. Whether the charge of perjury, or the facts on which it rested, were true or honestly believed to be true is a question of fact no doubt; but whether assuming them to be true, they ought to have reasonably induced the defendants to prosecute, in other words, whether they amounted to reasonable or probable cause, is a question of law for the judge. This is an old settled rule, and the leading cases establishing it are found in all treatises on this subject. They will be found too, at page 202, of the second volume of the book I have just mentioned, but as this was never doubted, I do not now particularly refer to those cases. What I wanted to refer to especially was at page 201 of the same volume: "Though malice may be inferred from want of reasonable and probable cause, the latter cannot be inferred from malice. Both are to be inferred from the acts, conduct and expressions of the defendant, as for example, the existence of a collateral motive in the defendant, such as a resolution to stop the plaintiff's mouth." Here I am persuaded there was a resolution to stop the plaintiff's mouth, or at all events, to stop his proceeding *en nullité de décret*, by this man Bolduc, who got his property for a mere song. I do not cite this book as authority on anything new, nor even as authority at all, but as reasonable observation on existing law, which in this instance and others is expressly given in a note. I find, too, on the same page, another apposite observation: "It may be inferred from the fact that the prosecution was instituted for a collateral purpose, such as for frightening others, or enforcing payment of a debt." I cannot shut my eyes to the fact that Mr. Charles Thibault in his deposition admits that the plaintiff may not have understood that the bailiff served an action on him, and it appears certain that Mr. Charles Thibault had possession of the copy said to have been served; and though he is not a defendant now, I cannot disconnect him from the others as far as his acts affect them. The circumstances of the arrest, and remands, and expenses the plaintiff was put to must be taken into consideration, and I feel obliged to give him damages which I fix at $50, and costs of action brought. This man is proved to bear a most excellent character, and he has been treated to say the least, with great harshness. I am persuaded from the facts of the case that his affidavit was true as far as his knowledge went, and there was no perjury, though technically no doubt the judgment on the *requête* held rightly that the service was sufficient.

Duhamel & Co. for plaintiff.
Thibault & Co. for defendant.

KENAHAN v. GERIKEN.

Malicious Prosecution—Conviction.

Malice and want of probable cause are conclusively disproved by the conviction of the plaintiff.

JOHNSON, J. This is an action for a malicious prosecution and arrest; and I may say at once, that considering the way in which the plaintiff has been treated by the law, and by those who are to some extent the ministers of the law, I regret very much being obliged to dismiss it. The plaintiff was a carter and was stationed in front of the St. Lawrence Hall by his comrades under circumstances that the defendant must have known very well; yet he thought proper, as he had strictly a right to do, no doubt, to prosecute him for loitering there as a vagrant, and he was convicted. The point of the case is very shortly come at. Is there such a thing as the possibility of proof of want of reasonable and probable cause, and of malice in the face of a conviction. I thought not at the trial, and I think so still. It was urged that in a case of *Forte* v. *The City of Montreal*, confirmed in Review two or three terms ago, the judges had held that in such a case they could incidentally

go into the question of the propriety of the conviction. It certainly was a peculiar case, and I have looked at it closely. A policeman had been called to his assistance by a person who was assaulted, and the officer, not showing much alacrity, was reproached by the person who had called him, and thereupon took upon himself to arrest him and take him to the station, and the next day the Corporation adopted the act of their officer, and had the plaintiff convicted of resisting the police upon the officer's testimony; whereupon the plaintiff in that case turned round and prosecuted the policeman before the Police Magistrate for an assault, and had him convicted and punished. He then brought an action of damages against the city, and the city pleaded that they were not bound by the act of their officer; but the Court held that they were bound, having adopted his act. That was all that was decided there, and that was all that the Corporation pleaded to the action; not a word about a conviction is in the plea in that case, nor in the judgment in first instance, which was simply confirmed in review as it stood, and even if the two cross convictions could both have been looked at, there was the conviction of the policeman for an assault, which showed he had no probable cause for arresting the plaintiff in that case. The case cannot therefore be cited as deciding that proof of want of probable cause is not decisively rebutted by a conviction, but rather the other way. In the work I cited just now in another case, where all the rules governing these cases are carefully collected, together with the adjudged cases on which their authority rests, I find the rule I laid down at the trial has always been considered as of the most necessary and decisive authority. Where a conviction is unreversed, it is conclusive evidence of the facts. See *Fawcett* v. *Fowles*, 7 B. & C. 394. Again: "Malice and want of probable cause, however, are conclusively disproved by the conviction of the plaintiff." *Mellor* v. *Baddeley*, 2 Cr. & M. 675. If it could be otherwise, how could I possibly judge of the fairness of a conviction on which I have not one word before me of the evidence given for or against it? No; I must hold to the rule which I have never seen departed from—and I do so with regret under the circumstances, because the plaintiff had a permission of the Chief of Police to stand there as he did; and although I must hold that the conviction was right, and the complainant there was right, so far as the law goes; and though the Chief of Police could not override the law more than the committee men who told him to do so, there certainly was hardship in the treatment the plaintiff got under the circumstances, at the instance of the defendant, who must have known all about it. I therefore dismiss the action, but without costs.

Keller & Co., for defendant.
Duhamel & Co., for plaintiff.

TORRANCE, J.

RHODES v. BLACK.

Contract—Illegal Consideration.

TORRANCE, J. This was an action of a peculiar character, arising out of an agreement between plaintiff and defendant. The plaintiff was a rich brewer in Pennsylvania, and defendant was in his employ as driver, and was known to be a person of intemperate habits. The latter was suddenly reported to be left heir of an estate in Australia. He entered into an agreement with his employer that the latter should supply him with $10 a week, and also disburse the money necessary to obtain information, for which he was to be indemnified, and to receive one-half of the estate. The amount realized was over $14,000. Plaintiff had disbursed $1,783, and when the moneys of the estate were lodged in the Bank of B.N.A., plaintiff took out the present action to recover his share under the agreement. Defendant pleaded that he was not on equal terms with regard to the agreement, the plaintiff being his superior, and he, defendant, being a man of intemperate habits. The Court was of opinion that the consideration of the agreement was not a lawful one, and plaintiff would only get judgment for $1,783.18, the amount which he had disbursed.

Abbott & Co., for plaintiff.
Kerr & Co., for defendant.

DORION v. POSITIVE LIFE ASSURANCE CO.

Insurance—Payment of Premium.

The question was whether the amount of insurance claimed on the life of deceased, was forfeited by the non-payment of the premium. The Company, after 1st May, ceased to do business in Lower Canada, and to have an agent there to whom payments could be made. The

plaintiff urged that it was not his duty to go to England, where the head-quarters were, to pay the amount.

TORRANCE, J., said that under the circumstances, the contention of the plaintiff should be maintained, and judgment must go against defendants.

Geoffrion & Co. for plaintiff.

Bethune & Bethune for defendants.

EVIDENCE OF ACCOMPLICES.

It has been observed in many of the celebrated criminal trials that have taken place in this country during the last few years, that the testimony of an accomplice has played an important part, and some of the most hardened criminals charged with high crimes could not have been convicted but for such testimony. But we cannot say that all convictions by the aid of such testimony are just, or that by its assistance the innocent may not *sometimes* suffer. Yet it is thought the stern necessities of good government demand the policy in the administration of Criminal Law, for without such testimony it is sometimes impossible to detect many crimes the most detrimental to society, and therefore the evidence of accomplices has at all times been admitted either from a principle of public policy, or from judicial necessity, or from both. They are no doubt requisite as witnesses in particular cases; but it has been well observed that in a regular system of administrative justice they are liable to great objections. "The law," says one of the ablest and most useful modern writers (Chitty) upon criminal jurisprudence, "confesses its weakness by calling in the assistance of those by whom it has been broken. It offers a premium to treachery and destroys the last virtue which clings to the degraded transgressor. On the other hand it tends to prevent any extensive agreement among atrocious criminals, makes them perpetually suspicious of each other, and prevents the hopelessness of mercy from rendering them desperate." *People* v. *Whipple*, 9 Cowen, 709.

Who are accomplices: The definition of the term "accomplice" in legal phraseology has not been the same in different cases.

In *Lindsay* v. *People*, 63 N. Y. 143, an accomplice is defined "as one of many equally concerned, or a co-partner in the commission of a crime. The term includes all the *participes criminis* whether considered in strict legal phraseology as principals or accessories." Bishop gives the following definition: "A person to be technically an accomplice must, it appears, sustain a relation to the criminal act that he could be indicted jointly with the others for the offense. 1 Bishop on Cr. Pro., § 1084; *Drum* v. *People*, 29 N. Y. 523-527. To constitute an accomplice, the person charged as such must have an intention of committing the crime, mere apparent concurrence is not enough. *United States* v. *Henry*, 4 Wash. C. C. Rep. 428. One who purchases intoxicating liquor sold contrary to law, for the purpose of prosecuting the seller for an unlawful sale, is not an accomplice. *Commonwealth* v. *Downing*, 4 Gray, 29. A detective who acts without any felonious intent but solely with the view of discovering the perpetrators of the crime is not an accomplice. *State* v. *McKean*, 36 Iowa, 343. So likewise a person who has no knowledge of a larceny until after its commission, and who buys the stolen goods by direction of an officer with funds supplied by an officer in order to detect the thief, is not an accomplice whose testimony needs corroboration. *People* v. *Barrie*, 49 Cal. 342.

In Alabama a partner of one of the players in his winnings or losses in the game in which the defendant played, and who advanced money to the defendant, which was used by him in betting on the game, is an accomplice within the Statute (Code, § 3600) which forbids a conviction on the uncorroborated testimony of an accomplice. *English* v. *State*, 35 Ala. 428.

A bystander does not become an accomplice by mere approval of a murder committed in his presence, and the charging of the jury that if the defendant was "present aiding, or abetting, or counselling, or inciting, or encouraging, or approving" the act, he was an accomplice, is an error, and the court must reverse and order a new trial. *State* v. *Cox*, 65 Mo. It is for the jury to determine whether or not a witness jointly indicted with the defendant is an acccomplice. *State* v. *Schlagel*, 19 Iowa, 169.

The practice now adopted in England is for the magistrate before whom the accomplice is examined, or the court before which the trial is had, to direct that he shall be examined, upon

an understanding that if he gives his evidence in an unexceptionable manner, he shall be recommended for a pardon. Roscoe's Cr. Ev. 124. In Scotland the course pursued with regard to an accomplice who has been admitted against his confederate, differs from that adopted by the English law, and seems better calculated to further the ends of justice. There by the very act of calling the accomplice and putting him on the witness stand, the prosecutor debars himself from all right to molest him for the future with relation to the offence charged.

"This privilege is absolute and altogether independent of the prevarication or unwillingness with which the witness may give his testimony. Justice, indeed, may often be defeated by a witness retracting his previous disclosures, or refusing to make any confession after he is on the witness stand; but it would be much more put in hazard if the witness was sensible that his future safety depended on the extent to which he spoke out against his associates at the bar." Alison's Prac. Cr. Law of Scot. 453. But in the United States an accomplice, by turning informer and testifying for the prosecution, acts under the implied condition that he earns an exemption from punishment by declaring the whole truth; but how are we always to know he tells the truth, especially when it is not an absolute requirement that he must be corroborated?

If testifying to an untruth would, in the opinion of the accomplice, be more likely to bring him exemption from punishment—which is generally the question of greatest importance with persons of such character—would it not be a most powerful incentive for him to do so? But is he not more likely to tell the truth than otherwise, even though he is conscious there is no evidence to corroborate him? These are speculative questions, but under the caution exercised by a prudent court, in its instructions to the jury, no great harm need be feared. Still, we believe that if, after having made his confession to the prosecuting attorney, he should be sworn on behalf of the prosecution, with the full understanding that in any event he could never be punished for the offence charged, it would be much the safer rule.

In England the court usually considers not only whether the prisoners can be convicted *without* the evidence of the accomplice, but also whether they can be convicted *with* his evidence. If therefore there be sufficient evidence to convict without his testimony the court will refuse to allow him to be admitted as a witness. Roscoe's Cr. Ev. 120. Accomplices may in all cases by permission of the court be used by the government as witnesses in bringing their associates to punishment. *Lindsay* v. *People*, 63 N. Y. 143. And although it is in the discretion of the court to admit or refuse, yet in practice this matter is left almost entirely to the discretion of the prosecuting attorney. This at least is the practice in the State of New York, and the court is not likely to interfere except in a case where under *all the surrounding circumstances* it seems to be necessary, as in the case of *People* v. *Whipple*, 9 Cowen, 708 (1827). In that case the district attorney moved the court that Jesse Strang, who had just been convicted by the verdict of a jury, as a principal, in the murder of which Mrs. Whipple stood charged as accessory before the fact, should be brought up and examined as a witness on the part of the prosecution. This was objected to by the prisoner's counsel, and the court, in a very elaborate opinion discussing the circumstances fully, denied the motion. The main ground for the denial of the motion seems to have been that Strang was the greater criminal of the two, even conceding Mrs. Whipple to be guilty of the charge brought against her, and that by allowing him to testify there would be an implied condition of recommendation of pardon if he told the truth. The court propounded the following significant question: "Why then should we select her for punishment in preference to him?" So in a later case where it was sought to make an accomplice a witness for the government upon an implied promise of pardon, the court held "that it rested upon judicial discretion and is not at the pleasure of the public prosecutor. An accomplice under an indictment for another offence, as a general rule, will not be admitted as a witness when such fact is known to the court, although he testify in good faith against his accomplice on the trial upon one indictment, he may be tried upon the other, and upon conviction punished. It would be a fraud upon the court and an obstruction of public justice if the public prosecutor should enter into an agreement unsanctioned by the court (if such

sanction could be given in such a case) offering immunity or clemency to several defendants in several indictments upon the condition that one of them became a witness for the prosecution upon still other indictments. *Wright* v. *Rindskoff*, 13 Wis.

The court would also undoubtedly interfere by refusing to try a prisoner who had testified as State's evidence against another if it should appear that the prosecuting officer was pursuing him in violation of the express or implied understanding. Bishop's Cr. Pro. § 1076, note.

"There is no practice in this State requiring a previous application or a formal order of the court to permit an accomplice to become a witness for the State." 63 N. Y. 143; 12 Hun, 215. It is not to be understood, however, that in all conceivable situations of an accomplice before the courts that it is in the discretion of the court to allow him to testify for the People. The true rule as to competency seems to be, When the persons indicted are all put on trial together, neither can be a witness for or against the others; but when they are tried separately, though jointly indicted, the People may call those not on trial, though not convicted or acquitted or otherwise discharged, with the permission of the court; but they cannot be called as witnesses for each other though separately tried, while the indictment is pending against them. If acquitted they may be examined, and even if convicted, unless it be for a crime which disqualifies, and then sentence must have followed the conviction. When all are *tried together* if the People desire to swear an accomplice, he must in some way be first discharged from the record. *Wixon* v. *The People*, 5 Park. Cr. 126; *Taylor* v. *People*, 12 Hun, 213-214.

When the accomplice is indicted separately from the rest he is of course a competent witness for the prosecution, though no disposition has been made against him.

In fact, with reference to his competency, an accomplice jointly indicted and separately tried is in the same condition as one separately indicted or one not indicted at all. 1 Bish. on Cr. Pro. §§ 1079, 1080. One of several persons indicted, although he have pleaded and defended separately, is not a competent witness for his co-defendants unless immediately acquitted by a jury, or a *nolle prosequi* entered, or convicted and sentenced for an offence which would not disqualify. *McIntyre* v. *People*, 9 N. Y. 39.

If a witness who has become State's evidence testifies corruptly, or makes only partial disclosures, he may then, having failed to perform the condition on which he was admitted, be proceeded against for his own crime; but he is not thus liable simply because of a failure by the jury to convict his associates. "It rests," said Lord Mansfield, "on usage, and on the offender's own good behaviour, whether he shall be prosecuted or not." And where an accomplice, after making a confession on the usual understanding, refuses to testify, this confession may be given in evidence against him on his trial. *Commonwealth* v. *Knapp*, 10 Pick. 477.

As the accomplice is entitled to no protection in respect to other offences, he is not bound to answer questions relative to such offences on his cross-examination. It is not usual to admit accomplices who are charged with other felonies. In the earlier State trials of England, the protection and countenance afforded by the courts to accomplices, spies and informers, was often carried to great lengths; but in modern times a closer scrutiny of the evidence from such a source is required, and more safeguards for the protection of the innocent established, so that the conviction of a prisoner by the aid of an accomplice at the present time, upon such weak and insufficient evidence as brought Algeron Sidney to the block, is almost an impossibility.—*Albany Law Journal.*

DIGEST OF U. S. DECISIONS.

(Continued from p. 264).

Illegal Contract.—Members of a public-school board, in their individual capacity, ordered apparatus for the schools, and agreed to call a meeting of the board and ratify the contract. *Held*, that the contract was against public policy, and would not support an action.—*McCortle* v. *Bates*, 29 Ohio St. 419.

See *Tax*, 1.

Indictment.—1. Indictment for burglary in a house "belonging to the estate of the late J. S." *Held*, bad; overruling former decisions.—*Beall* v. *The State*, 53 Ala. 460.

2. An indictment describing the prisoner's Christian name by initials only, is abateable by

plea setting out his name in full, with an averment that the same was known to the grand jury.—*Gerrish* v. *The State*, 53 Ala. 476.

3. An indictment for administering a poisonous substance (strychnia) with intent to kill, must aver that the defendant well knew the said substance to be a deadly poison.—*State* v. *Yarborough*, 77 N. C. 524.

Indorser.—See *Payment.*

Infant.—An infant cannot be a justice of the peace.—*Ex parte Golding*, 57 N. H. 146.

Injunction.—1. A tax-payer of a county may maintain a bill to restrain the county commissioners from publishing, at the expense of the county, the list of delinquent taxes in a newspaper other than that authorized by law for such purpose.—*Sinclair* v. *Commissioners of Winona County*, 23 Minn. 404.

2. The owner of a ferry franchise may have an injunction to restrain other persons from running, without license from the State, another ferry which takes away passengers from his.—*Midland Terminal & Ferry Co.* v. *Wilson*, 28 N. J. Eq. 537.

Insurance (Fire).—1. A policy required notice to be given to the insurers of any mortgage made on the property. *Held*, that the assured must give actual notice, at his peril; and that a notice sent by mail to the insurers, postage paid, but never received by them, was not sufficient.—*Plath* v. *Minnesota Farmers' Insurance Association*, 23 Minn. 479.

2. A policy provided that in case of loss the insurers might rebuild, on giving notice of their election so to do within thirty days. *Held*, that although they had not given notice within that time, they might afterwards rebuild, instead of paying the loss, if the assured consented, and notwithstanding his creditors objected.—*Stamps* v. *Commercial Ins. Co.*, 77 N. C. 209.

See *Railroad; Vendor and Purchaser.*

Insurance (Life).—1. A policy of life insurance was conditioned to be void on default of payment of any assessment within thirty days from date of notice thereof. *Held* (1), that the time was to be reckoned from and exclusive of the day on which the assured received the notice; (2), that by his death within that time the insurer's liability was fixed, and was not avoided though the assessment was not paid within the time.—*Protection Life Ins. Co.* v. *Palmer*, 81 Ill. 88.

2. A life insurance policy was conditioned to be void if death should happen while the assured was, or in consequence of his having been, under the influence of intoxicating drink. *Held*, that if the assured was drunk when he died, the policy was avoided; and that it was immaterial whether or not the drunkenness was the cause, proximate or remote, of the death.—*Shader* v. *Railway Passenger Assurance Co.*, 66 N. Y. 441.

Intent.—See *Evidence*, 8.

Interest.—A promissory note bearing interest at less than the legal rate will carry interest at the legal rate, as damages, after maturity.—*Moreland* v. *Lawrence*, 23 Minn. 84.

Judge.—A judge is liable for conspiring to institute a malicious prosecution in his own court.—*Stewar* v. *Cooley*, 23 Minn. 347.

See *Infant; Search-warrant.*

Judgment.—1. A joint warrant of attorney to confess judgment is not revoked by the death of one of the debtors; but judgment may be entered on it against the survivors.—*Croasdell* v. *Tallant*, 83 Penn. St. 193.

2. A joint conviction of two is a several conviction of each; and if one of the two is afterwards convicted of a like offence, he may properly be sentenced as for a second offence.—*State* v. *Brown*, 49 Vt. 437.

Juaicial Sale.—See *Adjournment.*

Jury.—See *Trial*, 1.

Justice of the Peace.—See *Infant.*

Landlord and Tenant.—1. A landlord having a lien for rent on the crop grown by his tenant may maintain an action against a stranger who removes the crop, with notice of the lien, although without any intent to defraud him of the benefit of it.—*Hussey* v. *Peebles*, 53 Ala. 432.

2. The owner of a building, having let the upper stories, neglected to repair a drain in the cellar, whereby the whole building was rendered unhealthy. *Held*, that the tenant might treat this as an eviction, quit the building, and refuse to pay rent.—*Alger* v. *Kennedy*, 49 Vt. 109.

See *Covenant; Evidence*, 6.

Lapse.—See *Devise*, 5.

Larceny.—The finder of lost property, who feloniously converts it to his own use, *animo furandi*, is guilty of larceny, though he does

not know who the owner is, if he has the means of finding him out, or has reason to believe, and does believe, that he will be found. —*State* v. *Levy*, 23 Minn. 104.

Lease.—See *Covenant; Evidence*, 6; *Trust*, 2; *Vendor and Purchaser.*

Libel.—In an action for publishing a libel in a newspaper, the defendant may show, in mitigation of damages, that he copied it from other newspapers.—*Hewitt* v. *Pioneer Press Co.*, 23 Minn. 178.

License.—See *Game.*

Lien.—See *Mechanics' Lien.*

Life Insurance.—See *Insurance (Life)*

Limitations, Statute of.—1. Six years, in the Statute of Limitations, means six calendar years, and not a period of so many days as are contained in six calendar years, if Sundays (when no process can be served) are not counted.—*Bell* v. *Lamprey*, 57 N. H. 168.

2. A debtor delivered to his creditor, in part payment of his debt, the promissory note of a third person, which was duly paid at maturity. *Held*, that this was a sufficient acknowledgment of the debt to suspend the operation of the Statute; but that the Statute began to run again from the time when the note was delivered to the creditor, and not from the time when it was paid.—*Smith* v. *Ryan*, 66 N. Y. 352.

Lord's Day.—See *Limitations, Statute of*, 1; *Trial*, 1.

Malicious Prosecution.—See *Judge.*

Mandamus.—A statute directed the commissioner of highways to open V. Street, in Philadelphia. To a *mandamus* requiring him to do so he returned that there was no such street. *Held*, on demurrer, that the return was good, though it contradicted the statute.—*Commonwealth* v. *Dickinson*, 83 Penn. St. 458.

See *Corporation*, 3.

Marriage.—See *Divorce.*

Measure of Damages.—See *Damages.*

Mechanics' Lien.—Furnishing materials and labor in putting a lightning-rod on a house, is not furnishing materials and labor "in building, altering, repairing, or ornamenting" the house, within the meaning of mechanics' lien law. —*Drew* v. *Mason*, 81 Ill. 498.

Misnomer.—See *Evidence*, 5; *Indictment*, 2.

Mistake.—A mortgage of a railroad to trustees was made and recorded. By inadvertence, words of inheritance were omitted; but it was plain from the whole instrument that the trustees must take a fee in order to execute the trust. *Held*, that the mortgage should be reformed by inserting words of inheritance; subsequent incumbrancers being affected by the record with notice that a mortgage in fee was intended to be made.—*Randolph* v. *New Jersey West Line R. R. Co.*, 28 N. J. Eq. 49.

See *Evidence*, 5.

Municipal Corporation.—1. A city was authorized by its charter to obtain by contract or purchase the wharves within its limits, with power to raise a revenue from the same by establishing and collecting rates of dockage. *Held*, that the city had no power to acquire a wharf to be used by the public, free of charge.—*Mayor, &c., of Mobile* v. *Moog*, 53 Ala. 561.

2. A town, authorized by its charter to suppress and restrain billiard-tables, may license them.—*Winooski* v. *Gokey*, 49 Vt. 282.

See *Bona Fide Purchaser.*

Murder.—See *Evidence*, 1, 3.

Name.—See *Evidence*, 5; *Indictment*, 2.

Negligence.—1. Action by a child three years old to recover for injuries caused by defendants' negligence. *Held*, that negligence of the child's parents was no defence.—*Government Street R.R. Co.* v. *Hanlon*, 53 Ala. 70.

2. A. invited B. to drive with him, and they were both injured at a railroad crossing, by the negligence of the railroad. *Held*, that B. might recover damages whether or not A. was negligent, he being a competent driver, so that B. was not negligent merely in going with him.—*Robinson* v. *New York Central R. R. Co.*, 66 N. Y. 11.

See *Carrier* 3, 4; *Railroad.*

Negotiable Instruments.—Interest coupons on negotiable bonds of a corporation, payable to bearer, at a specified time and place, are negotiable separately, and are entitled to grace; and one who buys them within three days after the time specified for payment is a purchaser before maturity. But if not made payable to bearer, or order, they are not negotiable, nor entitled to grace.—*Evertsen* v. *Nat. Bank of Newport*, 66 N. Y. 14.

See *Bank; Interest; Payment.*

New Trial.—See *Trial*, 2, 3.

Notice.—See *Insurance (Fire)*, 1, 2.

Officer.—An officer is not bound to execute process which is voidable, though regular on its

face, and no action lies against him for refusing to execute it; though he is protected if he does execute it.—*Newburg* v. *Munshower*, 29 Ohio St. 617.

Parent.—See *Negligence*, 1.

Passenger.—See *Carrier*, 3.

Payment.—Where a promissory note held by a bank, in which the maker is a depositor, is dishonored, and the indorser is duly notified, and the maker afterwards makes a deposit on his current account, the bank is not bound to apply it in payment of the note, and the indorser is not discharged.—*Nat. Bank of Newburgh* v. *Smith*, 66 N.Y. 271.

See *Limitations, Statute of*, 2.

Physician.—See *Witness.*

Presumption.—The law will not presume that a woman seventy-five years old cannot have children.—*List* v. *Rodney*, 83 Penn. St. 483.

Principal and Agent.—See *Agent.*

Principal and Surety.—See *Surety.*

Proximate and Remote Cause.—Plaintiff owned houses fronting on a street, on the other side of which was a river. Defendants, a railway company, occupied with tracks and buildings the street, and land beyond, which they made by partly filling up the river. Plaintiff's houses took fire, and were destroyed, the engines and firemen being unable to reach the river by reason of the obstructions caused by defendants. *Held*, that defendants' acts were not the proximate cause of plaintiff's loss; so that even if such acts were unlawful, defendants were not liable for the loss.—*Bosch* v. *Burlington & Missouri R. R. Co.*, 44 Iowa, 402.

Quo Warranto.—1. The Constitution provides that any candidate for office guilty of bribery shall be disqualified for holding office. *Held*, that an officer might be removed by *quo warranto* for obtaining his election by bribery, without being first convicted of the offence on an indictment.—*Commonwealth* v. *Walter*, 83 Penn. St. 105.

Railroad.—Where a statute made railroad companies liable for all damages caused by fire from their locomotives, and gave them an insurable interest on property exposed along their lines, *held*, that they were liable as insurers, and that it was immaterial whether the owner of property so damaged was negligent or not.—*Rowell* v. *Railroad*, 57 N. H. 132.

See *Carrier*, 1, 3, 4; *Contract*; *Damages*, 2; *Fixture*, 2; *Foreign Attachment*, 1, 2; *Negligence*, 1, 2; *Tax*, 2; *Trust*, 1, 2.

Rape.—See *Evidence*, 1.

Receiver.—See *Foreign Attachment.*

Reprieve.—By statute, a reprieve granted to any person under sentence of death, on any condition whatever, shall be accepted in writing by the prisoner. *Held*, that the governor might grant a respite without conditions; that such reprieve need not be accepted; and that it might properly fix a future day for execution, which should then be done without further order of the court.—*Sterling* v. *Drake*, 29 Ohio St. 457.

Rescission.—A chattel was sold with warranty, and with an agreement that it might be returned if not satisfactory. *Held*, that the purchaser had a double remedy, and might sue on the warranty, though he had offered to return the chattel; the right to return being in pursuance, and not in avoidance, of the contract.—*Kimball Manuf. Co.* v. *Vroman*, 35 Mich. 310.

Revocation.—See *Agent*, 2; *Judgment*, 1.

Sale.—A sale by sample implies no warranty of quality, but merely that the goods are of the same kind as the sample, and merchantable.—*Boyd* v. *Wilson*, 83 Penn. St. 319.

See *Agent*, 1; *Corporation*, 2; *Rescission.*

Search-warrant.—A warrant appearing on its face to authorize the search of a dwelling-house for property belonging to the justice issuing the warrant, alleged to have been stolen, is absolutely void, and no protection to the officer who executes it.—*Jordae* v. *Henry*, 22 Minn. 245.

Sewer.—See *Tax*, 3.

Sheriff.—See *Officer.*

Statute of Limitations.—See *Limitations, Statute of.*

Stock.—See *Trust*, 3.

Sunday.—See *Limitations, Statute of*, 1; *Trial*, 1.

Surety.—A promissory note indorsed, due and unpaid, was replaced by a bond executed by the maker and indorser of the note to secure the same debt. *Held*, that the indorser, though in form a principal, was in equity only a surety on the bond.—*Merriken* v. *Godwin*, 2 Del. Ch. 236.

Tax.—1. A depositor in a bank took from the bankers a writing acknowledging the receipt of a certain sum equal to the amount of his deposit in United States bonds not taxable, and

promising to return the same on demand. *Held*, that this contract was lawful, though made for the express purpose of avoiding taxation on the deposit.—*Stilwell* v. *Corwin*, 55 Ind. 433.

2. A tax on gross receipts of railroad companies was *held* to be a tax on the franchises and not on the property of the companies, and, therefore, not forbidden by the Constitution, which requires all direct taxes on property to equal and uniform throughout the State. —*State* v. *Philadelphia, Wilmington & Baltimore R. R. Co.*, 45 Md. 361.

3. A statute authorizing assessments for sewers on such lots as the city council should determine to be increased in value by the improvement, in proportion to their superficial area, *held*, unconstitutional.—*Thomas* v. *Gain*, 35 Mich. 155.

4. Action on a promissory note, the consideration of which was a license to cut timber on plaintiff's land in another State. Defence, that the consideration had failed, by reason of a sale of the land for non-payment of taxes by plaintiff. *Held*, that defendant must prove not only that the land was in fact so sold, but that all the proceedings in levying the tax and in the sale were regular.—*Bisbee* v. *Torinus* 22, Minn. 555.

5. Tax acts are presumed not to intend the imposition of a double burden; and, therefore, where the whole capital stock of a national bank was taxable and taxed under State laws, it was *held* that no further tax on the real estate occupied by the bank for its business could be levied, there being no law expressly authorizing it.—*Commissioners of Rice County* v. *Citizens' Nat. Bank*, 23 Minn. 280.

6. Notice of the sale of land for non-payment of taxes is required by statute to be posted in some public place in the town or place where the land is situated. A tax sale of land in a settlement was *held* void when no notice had been posted anywhere in the settlement, though the settlement consisted only of six houses on separate farms, and contained no church, school-house, inn, shop, sign-post, or public highway.—*Cahoon* v. *Coe*, 57 N. H. 556.

7. By statute, all buildings belonging to charitable institutions, together with the land actually occupied by them, are exempt from taxation. A charitable corporation occupied land owned by it, and other land of which it had a lease, wherein it covenanted to pay the taxes. *Held*, that the former land was not taxable, but that the latter was.—*Humphries* v. *Little Sisters of the Poor*, 20 Ohio St. 201.

Telegraph.—See *Constitutional Law*, 2.

Tender.—1. A tender of the amount due on a promissory note secured by mortgage, made on the condition that the mortgage should be cancelled, is not sufficient.—*Storey* v. *Krewson*, 55 Ind. 397.

2. A tender of a debt due, without costs, if made before a writ has been served on the debtor, though after it has been sued out and delivered to an officer for service, is sufficient.—*Randall* v. *Bacon*, 49 Vt. 20.

Time.—See *Insurance* (*Life*), 1; *Limitations, Statute of*, 1.

Toll.—See *Corporation*, 1.

Trial.—1. A case was committed to a jury on Saturday night. *Held*, that the court might come in and receive their verdict on Sunday.—*Reid* v. *The State*, 53 Ala. 402.

2. *Semble*, that the admission of incompetent evidence is not cured by a subsequent instruction to the jury to disregard it.—*Sceipps* v. *Reilly*, 35 Mich. 371.

3. Where the judge at *nisi prius* suffered counsel, in opening the case, to read, against objection, papers not admissible in evidence, *held*, that this was such an abuse of his discretion as to require the granting of a new trial.—*Ibid.*

Trust.—1. A railroad corporation mortgaged its road to a trustee to secure payment of its bonds. After the trustee had taken possession of the road for default in payment of the bonds, he bought large quantities of the bonds, and afterwards sold them at an advance. *Held*, that he was bound to account to the corporation for the profits so made by him.—*Ashuelot R. R. Co.* v. *Elliot*, 57 N. H. 397.

2. He also leased land of the corporation to another corporation of which he was a director. *Held*, that the lease was voidable, but that the lessees should be allowed for improvements made by them.—*Ibid.*

3. A corporation increased its capital, allowing each stockholder to take at par as many new shares as he held of the old. A fund had been invested in the stock in trust for a person for life, remainder over. The trustees sold part

of their "options" to take the new shares, and bought new shares with the proceeds. *Held*, that the shares so bought went to the remainderman.—*Moss's Appeal*, 83 Penn. St. 264.

4. A trustee may be entitled on the termination of the trust to receive compensation out of the principal fund, in addition to his commissions on the income.—*Biddle's Appeal*, 83 Penn. St. 340.

See *Charity; Husband and Wife.*

Ultra Vires.—See *Bank*, 1, 2; *Municipal Corporation*, 1.

Usage.—See *Evidence*, 2.

Vendor and Purchaser.—Buildings demised by lease, giving the lessee the option to purchase, and insured for the lessor's benefit, were burned during the term, the rent being in arrear and the lessor collected the insurance. *Held*, that the lessee could not afterwards, by exercising his option to purchase, require the insurance money to be applied to satisfy the rent in arrear and the purchase money.—*Gilbert* v. *Port*, 28 Ohio St. 276.

Verdict.—See *Trial*, 1.

Waiver.—See *Corporation*, 3.

Warranty.—See *Rescission; Sale.*

Way.—When one grants a private right of way over his land, he is not necessarily debarred from erecting gates across the way; but whether it is reasonable and proper to do so is a question for the jury.—*Baker* v. *Frick*, 45 Md. 337.

See *Eminent Domain; Mandamus.*

Will.—At common law, the marriage of a *feme sole* revokes her will; and her husband's consent to the probate of a will made by her before marriage does not make the will valid, but all her personal property not reduced to possession by her husband during her lifetime is to be distributed among her next of kin.—*In re Carey*, 49 Vt. 236.

Witness.—1. A physician may be compelled to testify as an expert, without payment of anything beyond the ordinary witness fees.—*Ex parte Dement*, 53 Ala. 389.

2. A resident of a foreign State, while attending court as a witness, cannot lawfully be served with a summons in a civil action, even though he is not arrested.—*Person* v. *Grier*, 66 N. Y. 124.

3. Where the law provides no means for compelling a witness to appear before a justice of the peace and give his disposition, and his costs, if he does attend, are not taxable in the suit in which the deposition is taken, one who is cited so to appear, and does appear, cannot recover his expenses of the party who cites him, if the latter fails to appear and take the deposition.—*Feltt* v. *Davis*, 49 Vt. 151.

See *Evidence*, 4, 7.

GENERAL NOTES.

ADVERTISEMENTS sometimes write the history of a people or class as completely as do the inscription and characters found on Egyptian monuments, indicate to us the every-day life and customs of a people long departed. And we learn from an inspection of the advertising columns of the London *Law Times* how our professional brethren across the water manage many things. The purchase and sale of an established "Law Practice" seems to form quite an element of trade, judging from the numerous notices. In most instances the value of the practice, *i. e.* the yearly income is given. Again, the purchase, for a consideration, of an interest as partner in a law firm is of frequent occurrence in the column devoted to "wants." Others advertise themselves as professional *costs* draftsmen and accountants, while not a few "admitted" lawyers advertise for situations as "managing clerk." No professional cards of Attorneys and Solicitors, as are seen in American publications, are found, and no member of the profession advertises "special attention" given to any particular branch of the law, while "Touting" in the profession is regarded as it should be everywhere, as unworthy the dignity of a lawyer.—*Chicago Legal News.*

WOMEN IN THE COURTS.—The London *Law Times* says: "The Master of the Rolls does not appear to have approved of Mrs. Besant having determined to conduct her own case before his Lordship. The question is as to the custody of her infant child. Hence the following inquiry by the learned judge when Mrs. Besant did appear before him: His Lordship.—Does the lady really appear in person? Ince believed so. His Lordship.—This certainly is not a case to be argued by a lady in person. Ince said it was not for him to express any opinion upon it, whatever opinion he might entertain. His Lordship.—But it is for me; I consider it would be a shocking waste of the time of the court, and very likely it would be useless for the lady to attempt to argue the case, as it involves some very nice points of law. Has she a solicitor? Ince.—Yes my Lord. His Lordship.—Is he in court? Mrs. Besant.—No my Lord, he is not in court. Some solicitors are exercised in mind as to what was his Lordship's object in inquiring for the solicitor, and what course he would have taken, had the solicitor been present."