The Legal News.

Vol. IV. DECEMBER 17, 1881. No. 51.

THE ADMINISTRATION OF JUSTICE.

Two meetings of the Montreal bar have been held recently, at which various suggestions for the better administration of justice were discussed. The result was that the following received the unanimous assent of the members present :—

1. That there be only one division, except in cases of emergency as hereafter mentioned.

2. That the Court shall sit every juridical day except Saturday.

3. That cases be inscribed on the *rôle* generally, and not for any fixed day.

4. That on receipt of each inscription by the Prothonotary he shall immediately assign the nearest possible day for the hearing of the case inscribed, which shall be more than eight days after the filing of the inscription, unless both parties consent to a shorter delay, and thereupon the inscribing party shall notify the opposite party of the day so fixed for the trial of the case.

5. That the Prothonotary shall assign the days for trial of the several cases inscribed, according to the order of the receipt of each inscription, and shall put down five, and not more than five cases for each day of the sitting of the Court.

6. That each Judge shall only sit for one week at a time.

7. That the presiding Judge shall have power in his discretion to direct that a case which he may be incompetent to try, or which he may deem likely to be of a protracted character, be tried in another division, and it shall thereupon be the duty of another Judge of the Court to take the trial of such case in another separate division.

8. That the Court shall open at half-past ten in the forenoon, and shall sit till five o'clock in the afternoon, less the usual recess of one hour for lunch. And that the Court should not finally adjourn before three o'clock, unless all the parties interested in cases on the *rôle* for the day declare that they do not intend to proceed that day.

9. That any case which has to be continued beyond the day fixed for trial shall be put at the foot of the general *role*.

10. That in the taking of evidence stenographically, only the material parts of the evidence shall be taken down, under the direction of the judge.

11. That the rule with regard to deposit be strictly enforced.

12. That the stenographer shall read over the evidence to the witness before he leaves the box and in the presence of the Court, and shall transcribe and deposit the same, so transcribed, with the Prothonotary within three days from the examination of the witness, under pain of suspension, and that he be paid therefor at the rate of ten cents per 100 words.

The following suggestions, with regard to cases inscribed for hearing on the merits, were also approved :—

1. That the Court shall sit during the first ten juridical days of each month, over and above the Saturdays, which shall not be computed among such days.

2. That cases be inscribed on the *role* generally, and not for any fixed day.

3. That on receipt of each inscription by the Prothonotary he shall immediately assign the nearest possible day for the hearing of the case inscribed, which shall be more than one clear day, when inscribed in term, and four days when inscribed in vacation, after the fixing of the inscription, and thereupon the inscribing party shall notify the opposite party of the day so fixed for the hearing of the case.

4. That the Prothonotary shall assign the days for hearing of the several cases inscribed, according to the order of the receipt of each inscription, and shall put down six, and not more than six cases, for each day of the sitting of the Court.

5. That any case which has to be continued beyond the day fixed for hearing, shall be put at the foot of the general *role*.

6. That each judge shall only sit for one week at a time.

STENOGRAPHERS' FEES.

It is well known that a previous reduction of stenographers' fees in the Montreal Court House, from thirty to twenty cents per hundred words, had the effect of driving some of the most com-

petent stenographers away from the place altogether. They sought in other cities the remuneration which was denied to them in Montreal. The result has been more frequent complaints on the part of judges and counsel of ignorant and incompetent writers. We see that it is now proposed to reduce the rate still further to ten cents. We are at a loss to imagine what ground can be stated for this, unless it be to make the work so unsatisfactory as to compel the appointment of permanent officers of the Court for this duty, which would probably be a better system.

CARRIER'S LIABILITY BEYOND TERMINUS.

In a recent case, *The St. Louis Ins. Co.* v. *The St. Louis, Vandalia, Terre Haute & Indianapolis R.R. Co.*, the U. S. Supreme Court has decided that, in the absence of a special contract, express or implied, for the safe transportation of goods to their known destination, a carrier is only bound to carry safely to the end of its line, and there deliver to the next carrier in the route. Where a carrier joins with other companies in establishing a through rate between points, to be divided between themselves upon the basis of distance, this fact of itself does not imply an undertaking on the part of the former to carry beyond its own line, or to become bound for any default or negligence of other carriers. Reference was made by the Court to the case of *Railroad Co.* v. *Manufacturing Co.*, 16 Wall. 328, a case before the same Court, in which the principle above stated had already received the sanction of the Supreme Court, and to *Railroad Co.* v. *Pratt*, 22 Wall. 129, as also recognizing the same rule.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, Nov. 30, 1881.

JOHNSON, JETTÉ, MATHIEU, JJ.

[From S. C., Ottawa.

WATSON v. SMITH *et al.*

Procedure—Judgment by error—Replacing case on roll.

The Court of Review may direct a cause which has been discharged by error, to be replaced on the roll, even where the motion to restore the case is made during a subsequent term of the Court.

Semble, the proper mode of obtaining relief is by requête civile, and not by motion.

JOHNSON, J. A motion is made to restore to the roll of inscriptions in this Court a case which was discharged last term by error, during the absence of the inscribing party. I must say that I am generally for rectifying errors in all cases where it can be done without injustice. In the present case, the misapprehension is sworn to in an affidavit which is uncontradicted. There have been few cases of this kind; but there was one decided in this court in 1873, *Sheppard* v. *Buchanan*; and *Neil* v. *Champoux*, (7 Q. L. Rep. p. 210) is another case bearing on the subject. In the first case the restoration of the inscription was allowed, and I see no reason whatever alleged against it by any of the Judges, except what was expressed by Mr. Justice Mackay, to the effect that the Court was no longer seized of the case. That appears to me to be just the point that must not be taken for granted. One party says the Court has only lost its hold of the case by an error—a misunderstanding—*i. e.*, that it has not effectually been disseized of it; but only by a mistake that ought not to have the effect of an intentional act,—such a mistake as would avoid a contract—in one word that the Court is not really, and in fact, but only mistakenly and apparently disseized of the case. He says he has not lost his right any more than he could his property through error; and the existence of this error is just the fact that will determine whether the Court ought to be held to have the case still before it or not. However that may be, the decision of the Court in that case was to restore the inscription, the application being made the same term during which the mistake happened and had its effect. In the Quebec case it was a *requête civile* and not a motion that had been granted by Mr. Justice Polette, and the case was taken to review in Quebec, where his judgment was confirmed by Meredith, C. J., Stuart, J., and Caron, J. The only real difference between the two was the form, the one being a motion and the other a *requête civile*, and this, of course, is not an empty form, for under the *requête civile* you can order evidence, but not under the motion. But here there is nothing to go to evidence upon. The fact is established by affidavit, and the opposite party does not even take the trouble to contradict it; therefore it is admitted. It is not

only an allegation, which, if not denied, would be taken as admitted if it were the basis of an action; it is an allegation that is supported by an oath, and there is therefore an end of the matter as far as the fact goes. Then as to the time. The term in which this happened has elapsed; but I see difficulty in laying down any iron rule on that head. The Court is here to protect the rights of the parties, and where we see we can do so, even not during the same term, without violating any rule, or any right, we think we ought to do so. Therefore we grant the motion upon payment of costs, and order the record to be brought before us. We merely desire to add that the right course generally in all these cases is the *requête civile*, and not a motion.

M. McLeod for plaintiff.

L. N. P. Coutlee for defendants.

SUPERIOR COURT.

MONTREAL, Nov. 29, 1881.

Before TORRANCE, J.

LEBEL v. PARADIS *et al.*

False arrest — Probable cause.

A larceny of bank bills of $50 *and* $20 *had been committed, and persons in the dress of workmen were observed offering bills of the above denominations. Held, that there was probable cause for their arrest, and the policemen who made the arrest were freed from liability.*

This was an action of damages for maliciously arresting the plaintiff, without probable cause. The plea was that the arrest was made on reasonable and probable cause. The defendants were the Chief of Police and three constables of the city of Montreal.

Early in the month of November last, a sum of $1,200 in bills of $20 and $50 of the Banque Jacques-Cartier had been stolen from the office of Messrs. Lacoste & Globensky, advocates, of this city. Notice had been given to the police, and among others to the defendants, and they were on the *qui vive*. On the morning of the arrest, the plaintiff, accompanied by others in the garb of workmen, entered the Jacques Cartier Bank in the city, and presented to the clerk bills of the Bank of the denominations of $20 and $50, for which they asked change. Mr. Brunet, the assistant cashier, was informed, and knowing of the larceny of bills at the office of Messrs. Lacoste & Globensky, he at once hurried off to the office of the Police, and told the police of the visit at the bank, and said that the men required to be watched. They were seen entering into a tavern near the Court House for refreshment, and on their coming out, being watched, were arrested in the vicinity of the Police office, and in the office interrogated instanter by the Chief of Police. Their explanation was that they were employees of the Quebec & Occidental Railway, and had come into town for their pay, or to have it changed, and the bills they had were received from the company. The explanation was considered satisfactory, and they were at once discharged.

PER CURIAM. The Court here sits as a jury, and it has to decide whether the plea of the defendants that there was probable cause for the arrest of the plaintiff without a warrant was made out. There is evidence that a felony had been committed, and it was the duty of the police to arrest the guilty parties, even without a warrant, and they are justified in arresting even an innocent party on probable cause. One of the leading cases in England is *Ledwith* v. *Catchpole*—Caldecott's cases, 291, reported at length in 1 Bennett & Heard's Leading Criminal Cases, 158, where it was held that where a felony has actually been committed, a constable, or even a private person, acting *bona fide*, and in pursuit of the offender, upon such information as amounts to a reasonable and probable ground of suspicion, may justify an arrest. Lord Mansfield said: "The first question is, whether a felony "has been committed or not. And then the "fundamental distinction is, that, if a felony has "actually been committed, a private person "may, as well as a peace officer, arrest; if not, "the question always turns upon this: was the "arrest *bona fide?* Was the act done fairly, and in "pursuit of an offender, or by design, or malice, "and ill-will? Upon a highway robbery being "committed, an alarm spread and particulars "circulated, and in the case of crimes still "more serious, upon notice given to all the sea-"ports, it would be a terrible thing, if, under "probable cause, an arrest could not be made; "and felons are usually taken up upon descrip-"tions in advertisements. Many an innocent "man has and may be taken up upon such sus-"picion; but the mischief and inconvenience to "the public, in this point of view, are compara-

" tively nothing. It is of great consequence to " the police of the country." There was a verdict for the defendant. *Vide Beckwith* v. *Philby*, 6 B. & C. 635; *Davis* v. *Russell*, 5 Bingham, 359; *Rohan* v. *Sawin*, 5 Cushing, 281; and the foot note in Bennett & Heard to *Ledwith* v. *Catchpole*.

In the present case there having been a felony committed, and the prisoners, in the garb of workmen, having presented at the bank bills of $20 and $50, very unusual bills for persons in their station to have, the arrest appears to have been made by the police within the limits of their duty, and the plea should be maintained.

The cases of *Coyle* v. *Richardson*, and *Walker* v. *City of Montreal*, cited by plaintiff, are entirely different from the present one, and should not lead us here. As Lord Mansfield says: "An innocent man has been taken up, upon such suspicion; but the mischief and inconvenience to the public, in this point of view, is comparatively nothing. It is of great consequence to the police of the country."

Action dismissed.

Loranger & Co. for plaintiff.
Roy, Q. C., and *Ethier* for defendants.

SUPERIOR COURT.

MONTREAL, Nov. 30, 1881.

Before TORRANCE, J.

BROWN v. WATSON *et al.*

Partnership—Liability for deposit.

A sum of money was received by the financial member of a firm, who gave the receipt of the firm therefor, and credited the money to himself in trust. Held, that the firm was liable for the repayment of the amount.

The action was to recover $2,200 and interest, alleged to have been deposited with defendants in May, 1875. The evidence of the deposit was the receipt signed by James Rose, a member of the firm, in the name of the firm.

The plea was that the defendants never received the money, and that the receipt of James Rose was a violation of the articles of the partnership.

PER CURIAM. The evidence shows that the money was received by the firm and went into their funds in the bank, and was credited to James Rose in trust in their books. James Rose was the member of the firm especially charged with the management of the finances, and continued to have charge of the finances and books till December, 1879. He says he withdrew it in September, 1875, but replaced it subsequently. There is proof that the firm did not know the plaintiff in the transaction, and never paid her interest, but interest at 7 per cent. was credited James Rose in trust on his deposits. In December, 1879, when this trust account was closed, it was found to be deficient $1,266.76, which was charged to James Rose individually.

The Court refers to Story on Partnership, §§ 102, 105: "If one partner should borrow money on the credit of the firm, which he should subsequently misapply to his own private purposes, without any knowledge or connivance on the part of the lender, the firm would be bound therefor." *Vide* also Pollock, Digest—Partnership, art. 18, pp. 33, 36, 39.

It is plain that the firm got the money. The borrower was the financial partner, agent for the co-partners, and they were bound by his acts. The position the court takes with respect to this matter is that the money, being received by the firm, it benefitted by it, and its agent, the financial member of the firm, James Rose, having received the money for the firm, and given the acknowledgment of the firm for it, the firm is bound thereby till repayment, and redemption of the note.

Judgment for plaintiff.

L. N. Benjamin for plaintiff.
Ritchie & Ritchie for defendants.

SUPERIOR COURT.

MONTREAL, Nov. 30, 1881.

Before JOHNSON, J.

BOILEAU v. LA CORPORATION DE LA PAROISSE DE STE. GÉNEVIÈVE.

Corporation—Passing an offensive and injurious resolution—Damages.

The defendants, a municipal corporation, passed a resolution affecting to remit certain arrears of taxes on the ground that the plaintiff (the debtor) was about to invoke prescription. Held, that this was injurious, and that the plaintiff was entitled to have the resolution expunged from the minutes.

PER CURIAM. The plaintiff's action here is against a corporate body, alleged to have been guilty of conspiracy to injure

the plaintiff. The latter complains that on the 9th October the corporation adopted a resolution concerning him and two others, to the effect that as they owed four years of arrears of taxes, the last year should be remitted under art. 950 of the Municipal Code, inasmuch as the plaintiff and other persons named intended to invoke the prescription enacted by that article; and the resolution further directed the officer of the corporation to notify the debtors of this, and of the determination of the council to sue them if they did not pay the three years which were recoverable by law. That subsequently, on the 2nd November, there was another meeting of the council, which the plaintiff attended, and at which he informed them that their first resolution was offensive to him, and explained to them that he did not personally owe these four years' arrears, and requested the council to erase their first resolution—which request they took into consideration, and adjourned until the 10th November, when there was another regular meeting, and it was resolved not to alter or withdraw the resolution complained of, as there was nothing offensive in it. Then the declaration alleges a statement made individually by one of the individual members of this council, to the effect that it would have been humiliating to them to erase the obnoxious resolution; and subsequently it alleges that a suit was brought by the secretary treasurer in his individual capacity against the present plaintiff, and that the members are all related or connected with each other, and made common cause together to vex and insult the plaintiff; and he says he has suffered damage by all this, and concludes for a condemnation *against the corporation* for $200, and also that they should be held to erase the resolution complained of.

This action is encountered, 1st, by a demurrer to the declaration, mainly on the ground that no action will lie against a corporation for *injure* which is alleged to result from the action of its individual members. This demurrer was dismissed; but it comes up again now on the merits; and I must dismiss it too. The ground on which it was dismissed in the practice court was that the demurrer in its terms denied the truth of the allegations as well as their sufficiency. Without questioning that, I should be disposed to go further and say, that although the declaration does most unscientifically mix up allegations of the malice of certain individual members of this body, with other allegations of wrong committed by the body itself in its corporate capacity—and although it is clear that a corporation as such is not so liable—yet there is no partial demurrer to those allegations affecting only the individuals; and there is unquestionably in the action, an averment that not only the individuals did wrong (which is not to the purpose); but also that the corporation did wrong too. They may have no responsibility in their corporate capacity for what one or several members of the body choose to do individually; and the conspiracy alleged against these members is plainly a matter for them to answer personally. But when this corporation itself does a corporate act, such as the passing of this resolution and the entry of it in their records—and that act is injurious to another, the corporation can surely be held to repair that injury to the extent of its power. Now what is it this corporation has done which was within their authority to do, and which individuals of their own authority could not have done? They have by a majority at a regular meeting, where they were exercising their public function, placed on record what was offensive and injurious to the plaintiff. They said that although the gentlemen named in the resolution well knew they owed, yet as they wished to avail themselves of art. 950 by pleading prescription for the fourth year's arrears, they would make '*don et remise*' of the fourth year's taxes, and only ask for three years. Then they were remonstrated with by the plaintiff who seems to have behaved very temperately, and they passed another resolution that they saw no occasion to undo what they had done. I don't think it makes any difference whether they were right or wrong in their law: whether the debt they remitted or affected to remit was really due by the plaintiff or not. They probably had in view the natural obligation of a man to pay his debts—whether barred by a statute of limitations or not; and they wanted to say, and to put on record that the plaintiff had done a shabby thing, and they would make him feel it, by making him a present of the amount. This was not the exercise of a right: it was a wrong. They might have had a right to discontinue any claim they had or imagined they had: they

could have no right to do it in an offensive or insulting manner, no right to wound as they did, and plainly intended to do. Judgment for $10 damages, and to erase within 15 days from judgment the resolution of the 9th October, 1880, and to pay the costs of this action.

J. B. Lafleur for plaintiff.

R. & L. Laflamme for defendants.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 29, 1881.

DORION, C.J., RAMSAY, TESSIER, CROSS & BABY, JJ.

WHITMAN (plff. below), Appellant, and THE CORPORATION OF THE TOWNSHIP OF STANBRIDGE (deft. below), Respondent.

Municipal Code—Front Road—Obligation to fence.

The fences separating a front road from adjacent lands are not part of the road, to be constructed at the cost of the municipality.

The action was brought by the appellant in the Circuit Court for the district of Bedford, alleging that the respondents had illegally opened a road across appellant's land and had neglected to fence it, whereby the appellant was injured, and put to expense in fencing his land.

The respondents pleaded that the road opened was a front road, and that they were under no obligation to make the fences.

The final judgment in the Court below was rendered by Dunkin, J., dismissing the action for the following reasons:

"Considering that it is sufficiently established in evidence that the road in the declaration mentioned, and by reason of the making of which the plaintiff was put to the expense of fences, which by this suit he seeks to recover from the municipality defendant, was duly established as a front road in respect of the lots thereby traversed, and notably of the land of the plaintiff here in question, and that at the time here in question the same was, and that it is such front road;

"And considering that the fences along such front road upon the said plaintiff's land were, and are consequently by law, a charge, not upon the municipality defendant, but altogether upon the plaintiff, and that the municipality defendant has in the premises in no wise wronged him the plaintiff."

The majority of the Court held that the judgment should be affirmed. The following dissentient opinion was delivered by

RAMSAY, J. This case brings up a question which, so far as I know, is novel, and it is in contradiction to opinions generally received, which, however, seem to me to be unfounded. It will, therefore, be necessary for me to explain, with some precision, the grounds of my dissent from the judgment about to be rendered.

The appellant sued the respondent for the cost of fences which he had been obliged to put up owing to the opening of a front road across his land, and for damages arising from the failure of respondent to put up such fences. By the Municipal Code, the local municipalities (save three) in five counties support all the cost of municipal roads and bridges in the municipality. Art. 1080. "In the municipality of the town of Sherbrooke, in the local municipalities of the counties of Compton, Stanstead, Brome, Missisquoi, Huntingdon and Richmond, excluding therefrom the municipality of St. George of Windsor, and in those of the county of Shefford, excluding the municipalities of Milton and Roxton, all works on municipal roads and bridges are executed at the expense of the corporation, in the same manner as if a by-law was passed to that end under Art. 535." This is, in effect, to establish for these places a system of road-making diametrically the reverse, in every particular, of the general law on the subject. I understand that this is not denied by the majority of the Court; but that it is contended the fences are not a part of the road. And here, it seems to me, the error begins. It is perfectly true that the common law of the Custom of Paris, in rural parts, did not oblige the construction of fences, and if that law had remained unchanged I should have concurred in the judgment of the Court. But this rule has been totally changed. The change began, in the first place, by the usages of the country, owing, probably, in great measure, to the abundance of wood. The deeds of concession made the construction of fences a contractual obligation, and one so general as to be a common, if not a common law obligation. So much was this the case that the Agricultural Act treated fencing as a common law obligation, similar to boundaries. Without question or hesitation, the Civil Code adopted this, Art. 505: "Every proprietor may

oblige his neighbor to make, in equal portions or at common expense, between their respective lands, a fence or other sufficient kind of separation according to the custom, the regulations and the situation of the locality." There is no exception for the property of a municipality, whether it be a road or otherwise, and in practice no such exception is ever claimed by the municipalities. They fence their roads with their neighbors. With regard to by-roads (*routes*), to which the attention of the Legislature was specially called, there is an article applying this principle, which serves of course as an illustration of the right rule of law in all like cases not specially provided for. The Art. 775 enacts:—

"Upon any by-road which runs along the line of any land, one-half of the fence which separates such road from the land, forms part of the work to be done upon such by-road.

"But if a by-road divides a piece of land into two portions, the owner of such piece of land is not obliged to put up more fences along such by-road than he was before the establishment thereof. The remainder of the fencing forms part of the work on the by-road.

"The portions of the fences to be made on such by-roads, in default of provision therefor in any *procès-verbal* or by-law, as the case may be, are determined by the road inspector, in such a manner that the position of the neighboring proprietor be not more onerous that it was before the establishment of the road."

But, it will be said, it is provided for by a special Article, 774:—

"The fences which separate any front road from any land are at the costs and charges of the owner or occupant of such land, when the same are necessary."

But that applies to front roads generally, which are upheld by the proprietors, not to front roads which are owned and maintained by the municipalities. It is true there is no special article in so many words declaring that this does not apply to the municipalities of the five counties, but I don't think such excessive detail is required. But, at any rate, Art. 776 re-establishes the true doctrine:—

"Every fence required on any municipal road must be well made, and kept in good order, according to law."

That is to say, the necessary fences are to be maintained by those obliged for them by the law. Art. 505 of the Civil Code determines the responsibility of the municipality owner of the roads, subject to its charge.

I am therefore of opinion that the appellant should have part of his conclusions, namely, half the cost of the fencing.

Judgment affirmed.

Carter & Carter for Appellant.

O'Halloran for respondent.

RECENT ENGLISH DECISIONS.

Will—Extraneous evidence to explain ambiguity.—A dissenting minister appointed Henry S. and William M., of C., executors of his will. There were two deacons of his chapel, Henry S. and Thomas M., and Thomas M. had a son by the name of William Abraham M. There appeared to be no other persons answering more nearly to the description in the will. Upon proof that the testator had expressed a wish that the two deacons of his chapel should be his executors, extraneous evidence was held admissible to show that Thomas M., and not William Abraham M., was the person intended to be nominated by the testator. *In the Goods of Brake.* Probate Division, 45 L. T. Rep. (N.S.) 191.

Will—Bona vacantia—Interest claimed from the Crown.—The trustees and executors of a will administered the estate; and upon its being decided, in a suit instituted for the purpose, that there was an intestacy, and no heir or next of kin being discovered, the trustees assigned the leasehold property to the solicitor for the Treasury, to be held for the benefit of the Crown. The claimants, six years afterwards, established their claim as next of kin of the testator, and the court declared them entitled. *Held*, that the Crown was not chargeable with interest on the rents and profits received from the property while in its possession.—*In re Gosman*, L. R. 17 Ch. D. 771.

RECENT U. S. DECISIONS.

Contract—Promise to marry—What constitutes refusal where no time fixed.—A contract to marry without specification of time is a contract to marry within a reasonable time. Each party has a right to a reasonable delay; but not to delay without reason, or beyond reason.

The age of the parties and the pecuniary ability of the man to support a family are proper matters to consider in the reasonableness of the delay in a particular case. In this case the woman, plaintiff below, was twenty-three years of age when the defendant below first became her suitor. He was several years older. Her pecuniary means were quite limited. She was at service as a domestic servant. He was a well-to-do farmer, worth from $10,000 to $12,000. The promise was made, as she testified, in October, 1877, and repeated from time to time. She testifies that he passed the evening of October 4, 1879, in her company, remaining until after twelve o'clock; that he left promising to call the next Sunday and take her to church. He came not. She had understood they were to be married the next winter. She soon heard that he was paying attention to another lady. The second Sunday passed without his coming. She then wrote him, expressing her regret at his not keeping his promise, and her grief and pain at his neglect of her, and at his attention to another girl, and asking his forgiveness for some remark she had previously made. To this letter he made no reply, and never visited her after the previous 4th of October. Sunday evening thereafter she saw him at church in company with a young lady, and both looking at her in an insulting manner, but without speaking to her. *Held*, that a jury were justified in finding a refusal to marry. Marriage is a civil contract. A refusal to fulfil it may be as unmistakably manifested by conduct as by words. The true question was whether the acts and conduct of the defendant evinced an intention to be no longer bound by the contract. This has been held a correct rule in case of an agreement of sale of personal property. Freeth v. Burr, L. R., 9 C. P. 208. This rule applies with greater reason to a marriage contract, which should rest on mutual affection. *Wagenseller* v. *Simmers*, (Supreme Court of Pennsylvania). Opinion by Mercur, J.—[Decided May 2, 1881.]

Master and Servant.—A master retaining a servant in his employ through a stipulated term of service, cannot deduct from his wages for lost time, nor compel him to make up the lost time. He may discharge him for an unauthorized absence, but by receiving him back after absence he waives the right. [The converse of this was held in the city of New York recently. A servant of the city worked ten hours a day, at an agreed price per day, and subsequently learning that eight hours constituted a legal day's work, sued the city for compensation for the extra hours. Judge Barrett held that the servant was not bound to work more than eight hours a day, but if he did he was without remedy].—*Bast* v. *Byrne*, 51 Wis. 531.

DISQUALIFICATION OF JURORS.—Before the examination of jurors in the Guiteau case began on the 14th ult., Mr. Justice Cox made the following address upon the subject of the qualification of jurors:

"Before you are interrogated individually, I wish to make one or two observations: Under the Constitution of the United States the prisoner is entitled to be tried by an impartial jury. But an idea prevails that any impression or opinion, however lightly formed or feebly held, disqualifies from serving in the character of an impartial juror. This is an error. As the Supreme Court say: "In these days of newspaper enterprise and universal education, every case of public interest is almost, as a matter of necessity, brought to the attention of all the intelligent people in the vicinity, and scarcely any one can be found among those best fitted for jurors who has not read or heard of it, and who has not some impression or some opinion in respect to its merits.' If the prevalent idea I have mentioned were correct, it would follow that the most illiterate and uninformed people in the community would be the best qualified to discharge duties which require some intelligence and information. It is now generally, if not universally, agreed that such opinions or impressions as are merely gathered from newspapers or public report, and are mere hypothetical or conditional opinions, dependent upon the truth of the reports, and not so fixed as to prevent one from giving a fair and impartial hearing to the accused, and rendering a verdict according to the evidence, do not disqualify. On the other hand, fixed and decided opinions against the accused, which would have to be overcome before one could feel impartial, and which would resist the force of evidence for the accused, would be inconsistent with the impartiality that the law requires. There is a natural reluctance to serve on a case like this, and a disposition to seek to be excused on the ground of having formed an opinion, when in fact no real disqualification exists. But it is your duty as good citizens to assist the court in the administration of justice in just such cases unless you are positively disqualified, and I shall expect you on your consciences to answer fairly as to the question of impartiality, according to the explanation of it which I have given you."—Washington *Law Reporter*.

THE LAW OF BICYCLES AND TRICYCLES.—A tricycle, which was furnished with steam power upon a miniature scale, as an auxiliary force, was held to be within the Locomotives Act. Bicycle and tricycle law is thus summed up: "They are carriages, so as to have the guilt of furious driving laid at their door; they are not carriages, if asked to pay toll at a turnpike gate: but they are as much locomotives as traction engines, if they eke out their powers of endurance with steam, be it ever so little, or ever so carefully stowed away." —*Law Journal*.