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NEW TRIAL FOR INSUFFICIENT DAMAGES.

ENGLISH HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION, JUNE 20, 1879.

PHILLIPS v. SOUTH-WESTERN RAILWAY COMPANY.

A plaintiff complaining of a personal injury is entitled to compensation for the pain undergone, the effects on the health according to degree and probable duration, the incidental expenses, and the pecuniary loss; and if it appear that a jury must have omitted to take into account any of these heads of damages, and that the verdict is, under the circumstances, unreasonably small, it is competent to a court to order a new trial at the instance of the plaintiff, although there be no misdirection by the judge, nor mistake or misconduct on the part of the jury.

This was an action for damages caused by personal injuries resulting from an accident on the defendants' railway, tried before Field, J., and a special jury, of the city of London, at the beginning of April, 1879.

The plaintiff was a London physician, who, in December 1877, when at the age of forty-six, was so injured whilst travelling on the defendants' line, as to be utterly incapacitated, both physically and mentally, from pursuing his profession; and his life, according to the medical evidence, must in a very short time be lost in consequence.

The average of his net professional income for the ten years preceding the accident, after large deductions for the expense of making the income, was £5,000 a year. The medical attendance upon the plaintiff had been gratuitous, but it was estimated that £1,000 was the expense incurred before the trial by reason of the accident. The plaintiff was in the enjoyment of a private income of £3,500 a year.

The jury found a verdict for the plaintiff on the question of the defendants' negligence, and assessed the damages at £7,000.

A rule *nisi* for a new trial had been obtained on the plaintiff's behalf on the grounds that the judge had misdirected the jury in saying that they were not to attempt to give the plaintiff an equivalent for the injury he had suffered, and that the damages were insufficient.

Ballantine, Serg't and *Dugdale*, for the railway company, showed cause against the rule, citing *Forsdike and Wife* v. *Stone*, L. R., 3 C. P. 607; *Falvey* v. *Stanford* L. R. 10 Q. B. 54; *Rowley* v. *London and North-Western Railway Co.*, L. R., 8 Ex. 221; Mayne on Damages, 447; *Armytage* v. *Haley*, 4 Q. B. 917; *Hayward* v. *Newton*, 2 Str. 940; *Rendall* v. *Hayward*, 5 Bing. N. C. 424; *Kelly* v. *Sherlock*, L. R., 1 Q. B. 686.

The *Attorney-General* (Sir John Holker, Q.C.), *Pope*, Q.C., and *A. L. Smith*, supported the rule, citing *Pym* v. *Great-Northern Railway Co.*, 2 B. & S. 768, 769.

COCKBURN, C. J., delivered the judgment of himself and LOPES, J. This was an action brought by the plaintiff to recover damages for injuries suffered, when travelling on the defendants' railway, through the negligence of their servants. A verdict having passed for the plaintiff, with £7,000 damages, an application is made in this court for a new trial, on behalf of the plaintiff, on the ground of the insufficiency of the damages, as well as on that of misdirection, as having led to an insufficient assessment of damages; and we are of opinion that the rule for a new trial must be made absolute; not, indeed, on the ground of misdirection, for we are unable to find any misdirection, the learned judge having in effect left the question of damages to the jury, with a due caution as to the limit of compensation, though we think it might have been more explicit as to the elements of damages. It is extremely difficult to lay down any precise rule as to the measure of damages in cases of personal injury like the present. No doubt, as a general rule, where injury is caused by the wrongful or negligent act of another, the compensation should be commensurate to the injury sustained. But there are personal injuries for which no amount of pecuniary damages would afford adequate compensation: while, on the other hand, the attempt to award full compensation in damages might be attended with ruinous consequences to defendants, who cannot always, even by the utmost care, protect themselves against the carelessness of persons in their employ. Generally speaking, we agree with the rule as laid down by Brett, J., in

Rowley v. *London and North-Western Railway Company*, L. R., 8 Ex. 231, an action brought on the 9 and 10 Vict., ch. 93, that a jury in these cases "must not attempt to give damages to the full amount of a perfect compensation for the pecuniary injury, but must take a reasonable view of the case, and give what they consider, under all the circumstances, a fair compensation." And this is in effect what was said by Field, J., to the jury in the present case. But we think that a jury cannot be said to take a reasonable view of the case unless they consider and take into account all the heads of damage in respect of which a plaintiff complaining of a personal injury is entitled to compensation. There are the bodily injury sustained, the pain undergone, the effect on the health of the sufferer, according to its degree and its probable duration, as likely to be temporary or permanent; the expenses incidental to attempts to effect a cure, or to lessen the amount of injury; the pecuniary loss sustained through inability to attend to a profession or business, which again may be of a temporary character, or may be such as to incapacitate the party for the remainder of his life. If a jury have taken all these elements of damage into consideration, and have awarded what they deemed to be fair and reasonable compensation under all the circumstances of the case, a court ought not, unless under very exceptional circumstances, to disturb their verdict. But, looking to the figures in the present case, it seems to us that the jury must have omitted to take into account some of the heads of damage which were properly involved in the plaintiff's claim. The plaintiff was a man of middle age and of robust health. His health has been irreparably injured, to such a degree as to render life a burden and source of the utmost misery. He has undergone a great amount of pain and suffering. The probability is that he will never recover. His condition is at once helpless and hopeless. The expenses incurred by reason of the accident have already amounted to £1,000. Medical attendance still is, and is likely to be for a long time, necessary. He was making an income of £5,000 a year, the amount of which has been positively lost for sixteen months, between the accident and the trial, through his total incapacity to attend to his professional business. The positive pecuniary loss thus sustained all but swallows up the greater portion of the damages awarded by the jury. It leaves little or nothing for health permanently destroyed and income permanently lost. We are, therefore, led to the conclusion not only that the damages are inadequate, but that the jury must have omitted to take into consideration some of the elements of damage which ought to have been taken into account. It was contended on behalf of the defendants that, even assuming the damages to be inadequate, the court ought not on that account to set aside the verdict and direct a new trial, inadequacy of damages not being a sufficient ground for granting a new trial, in an action of tort, unless there has been misdirection, or misconduct in the jury, or miscalculation, in support of which position the cases of *Rendall* v. *Hayward*, 5 Bing. N. C. 424, and *Forsdike* v. *Stone*, L. R., 3 C. P. 607, were relied on. But in both those cases the action was for slander, in which, as was observed by the judges in the latter case, the jury may consider not only what the plaintiff ought to receive, but what the defendant ought to pay. We think the rule contended for has no application in a case of personal injury, and that it is perfectly competent to us, if we think the damages unreasonably small, to order a new trial at the instance of the plaintiff. There can be no doubt of the power of the court to grant a new trial where in such an action the damages are excessive. There can be no reason why the same principle should not apply where they are insufficient to meet the justice of the case. The rule must, therefore, be made absolute for a new trial.

Judgment for plaintiff.

ENGLISH COURT OF APPEAL.

July 28, 1879.

PHILLIPS v. SOUTH WESTERN RAILWAY COMPANY.

This was an appeal by the defendant company from the above decision of the Queen's Bench Division.

JAMES, L. J. In this case we are of opinion that we cannot, on any of the points, differ from the judgment which the Queen's Bench Division have arrived at in this matter. With regard

to the first point, which seems to me to be a very important one—that is, as regards dissenting from the verdict of a jury upon a matter which, generally speaking, is considered to be within their province, namely, the amount of damages,—we agree with what has been said in the Queen's Bench Division; and in saying this, we agree also that really the Judges have no right to differ from or overrule the verdict of the jury because they take a different view, and merely because they differ. The Judges may think that if they had been the jury they would have given a little more or would have given a little less. Still, there is this rule, that the verdicts of juries in all these cases are subject, and must, for the sake of justice, be subject to the careful supervision of a court of first instance, and, if necessary, of a court of appeal, in this way: that if, in the judgment of the Court, the damages given are unreasonably large, or if they are unreasonably small, then the Court is bound to act upon the conclusion thus arrived at, and must send the case again to be tried. The Queen's Bench Division came to the conclusion in this case that the amount of the damages was unreasonably small; and, for the reasons given by the Lord Chief Justice, pointing out certain facts which the jury could not have taken into consideration, I am of opinion, and I believe my colleagues are also of opinion, that the damages given were unreasonably small, though to what extent they fell short of what would be reasonable and proper we have no business to say, as that would direct another jury as to what amount they ought to give. So much upon that point. Then, if our decision remains unreversed by the House of Lords, where we understand this matter is to go, and the case goes before another jury, it may be important to see whether the direction of Field, J., was right. The Queen's Bench Division came to the conclusion that they could see no error or misdirection whatever in the summing-up of Field, J.; and it appears to me that the argument of the Attorney-General and Mr. Pope would not go to say that there was a misdirection, but rather that there was an ambiguity in the expressions of the learned Judge, which would have the effect of misdirection, and that sufficient attention was not drawn to the distinction between personal injury and pecuniary damages. The next point was with regard to the income supposed to be enjoyed by the plaintiff through his wife; and it was argued that that was not withdrawn sufficiently—not absolutely, as it ought to have been,—from the consideration of the jury. Now, on the first point, taking the whole of the summing-up together, it seems to me that the learned Judge tells the jury, almost in the words used by the Attorney-General, that, assuming the plaintiff is to live, they must not take that fact into consideration in an off-hand manner. He says: "Of course, as my brother Ballantine has observed, an accident might have taken him off; death might have seized him within a year. On the other hand, he might have lived for the next twenty years, and many things might have happened to prevent his continuing his practice. If it had been a question of trade or business, bankruptcy might have supervened. There is not the same difficulty in a case like this. That does not come into account. I am only giving it by way of illustration of what must pass through your minds, for the purpose of seeing what portion of this sum per annum you ought to consider would be the amount on which you can fairly base your calculation for the sum to be given." That is to say, they were to consider what his income would probably be; how long that income would last; and they were to take into consideration all the other contingencies which a practice was liable to. Again, he says: "After all, the damages a man is entitled to are to be in principle the consequences of the wrongful act. The consequences of the wrongful act here are undoubtedly that Dr. Phillips has been, and is prevented, from earning such a sum of money as you think he would be likely to earn on the average of years." Nothing could be put more favorably for the plaintiff than that was put by Field, J. With regard to the way in which the learned Judge dealt with the second point, without saying that his expressions are capable of being treated as a misdirection by reason of a possible ambiguity, we agree in the view taken by the Queen's Bench Division, and therefore the matter will stand exactly as it was left by that Division, so far as we are concerned.

Brett and Cotton, L. JJ., concurred.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, March 20, 1879.

MOREY v. GAHERTY et al.

Pleading—Costs.

JOHNSON, J. The plaintiff's action is directed against a firm alleged to be composed of Denis Gaherty and William Gaherty. The plea is an express denial of the existence of the debt, and also of the partnership. The defendants, both of them, deny the fact when interrogated. The rest of the evidence shows that there was a firm of Gaherty & Co., but not composed as alleged. Action dismissed, but without costs. The defendants (who plead together) ought to have disclosed the composition of the firm, so as to prevent the plaintiff from incurring costs.

Archibald & McCormick for plaintiff.

A. W. Grenier for defendants.

DUGUAY et al. v. SEATH.

Assignment of estate—Liability of transferee to creditors of transferor.

JOHNSON, J. I have no doubt at all in this case that the defendant is liable. The action is by a creditor of a firm called McFarlane & Hogue, against the defendant, who has taken possession of all the debtors' estate. He could only do this as *quasi* trustee for all the other creditors. He has paid others, and he cannot be permitted to take all the estate of the debtors, and so prevent their being made to pay their own debts, without making himself liable. That liability, however, would only be to pay the creditors as much in the pound as the estate would permit; but he has not pleaded this, nor offered anything. He contents himself with saying that Hogue, of the firm of McFarlane & Hogue, is perfectly solvent, and that he, the defendant, never had possession of the estate or stock. As to the first pretension, his own witness, Mr. Cassils, says that the firm was dissolved by the personal insolvency of Hogue. As to the second, Mr. Cassils knows nothing about it; but Delorme, a creditor, says he went to Seath to get payment, and Seath told him he had the stock, but could not tell what it would realize. Boivin, another creditor, also got from Seath some of the stock in payment. Seath had the key of the store, and took him there to make his selection. This I look upon as possession and control by Seath. When Mr. McFarlane himself is examined for the defendant, he makes it appear as if he had always kept possession; but he is examined in such a way that his answers were all ready made in the questions put to him, and to one question, asking if he was aware that Seath had disposed of any of the goods, he answers, "No, none, except through my instructions; but *I am not certain who disposed of them.*" I cannot set this evidence on the same footing as that of Delorme and Boivin, and it is only just that Seath should pay the plaintiff under the circumstances. The defendant's position is that of vicious intromission, to use an expression of the Scottish law. Judgment for plaintiff.

DeBellefeuille & Turgeon for plaintiff.

L. N. Benjamin for defendant.

MISELL v. LESSER.

Malicious Prosecution—Charge of Embezzlement—Want of probable cause.

JOHNSON, J. This is an action by a commercial traveller against his employer to recover damages, for having maliciously and without probable cause, procured his arrest and detention on a charge of feloniously embezzling $30. On a previous occasion the plaintiff had sold his samples, and had been debited with the amount by his principal, who, however, then told him not to do it again; but this time he got instructions by telegraph to sell them for $50 to $60, and all over $60 was to be his own. He returned to Montreal after selling these samples for $50, and left $20 in the defendant's office in his absence. There can be no doubt as to his right to sell these samples; but his right to use the money is, of course, another thing. The parties do not agree as to which of them was the debtor at this time. Prior and Newman both say the plaintiff was in the defendant's debt. There has been an agreement between them reduced to writing by Mr. Prior; but it has unaccountably disappeared. It seems, also, that the plaintiff, after selling the samples, had no money left to pay his expenses. I refer to these circumstances, not because they are in themselves decisive of the right of the plaintiff to use part of the money: that, of course, would depend on the state of the account, and the

agreement or custom between the parties; but because they must have a proper weight in determining the probable cause which the defendant had for accusing the plaintiff of a criminal offence. I do not, of course, deny or admit the right of either party to any specific amount, until that amount is ascertained; but I do deny to the employer the right, when his agent uses money to which he thinks, rightly or wrongly, he is entitled, to have him arrested as a felon, without showing a fair case for doing so. There is all the difference in the world between insisting on one's right, and even enforcing it by all legal means, and treating your debtor as a criminal if he does not pay you. It may be doubtful how much either of these parties may owe the other; but there can be no doubt that it is a very cruel thing to treat a young man as having deliberately committed a felony when he only acts under an assumed right that you can test whenever you please by a common action. There are a good many debtors in the world; but I hope they are not all criminals. The defendant seems to have been angry, however, and he rejected the counsel of his brother to desist from criminal proceedings. The Magistrate must have thought the case a very weak one, for he took the plaintiff's personal recognizance at first; nevertheless, it was at the defendant's instance, and on his affidavit, that he was arrested on the street by a policeman; and a bill of indictment went before a grand jury, and was thrown out. The fact that this young man must have suffered damage is self-evident; and besides, the witnesses swear to the fact; but I have got to assess the amount as a jury would. I hold there was no probable cause for charging the plaintiff with having feloniously embezzled. Embezzlement is a form of theft usually characterized by artifice or stealth—withholding the property of the master under color of right openly, seems to me to have none of the features of embezzlement, nothing to justify a criminal charge. It is, of course, a very serious thing to be publicly subjected to such a charge in the case of a young man beginning life, situated as the plaintiff was; and I assess the damages at $200; costs as in action brought.

Davidson & Co. for plaintiff.

Keller & Co. for defendant.

GUY v. GUY et al.

Prescription—Interruption.

JOHNSON, J. The declaration is very special in this case. By a former action the plaintiff and his sister, Mme. Berthelet, claimed under the will of the late Etienne Guy, Senior, that two pieces of land which had fallen to the share of their late brother (Et. Guy, Junior,) in a provisional *partage* of substituted properties which took place in 1831, had returned to them, because Et. Guy, *fils*, had left no legitimate issue to *recueillir* the substitution at his death, which took place in July, 1875, and they demanded that the defendants, as representing Et. Guy & *Fils*, be compelled to restore the two lots or their value. The defendants in that former action pleaded that these two lots did not form part of the substitution created by the will of Et. Guy *père*. Mr. Justice Rainville held that both the lots fell into the substitution, and gave judgment against the defendants. They appealed, however, and the Queen's Bench decided that one of the lots was substituted, but the other not. The present action sets up these facts, and avers that Mrs. Etienne Guy (mother of the plaintiff and of Et. Guy, *fils*,) bequeathed all her estate, real and personal, to her two sons (the plaintiff and Et. Guy, *fils*), and the contention is, that since the lot excluded from the substitution did not belong to Et. Guy, *fils*, for any part, as a substituted property, it belonged to plaintiff for one-half, as legatee to that extent of his late mother, and that the defendants, as representing the late Et. Guy, *fils*, who had taken possession under the *partage* of 1831, should be condemned to deliver to the plaintiff one-half of the lot or of its value.

The defendants severed in their defence, but have pleaded, both of them, the same plea separately; and, after a general denial, they set up a thirty years' prescription as resulting from a sale by Et. Guy, *fils*, to Gerard a year or two after the voluntary *partage*, and the continuous possession by the purchaser and his assigns ever since. The plaintiffs have answered these pleas, by alleging bad faith, vicious title, and interruption. The defendants proved the continuous and successive possessions of Try, to whom Gerard sold, and of the other vendees down to the present possessors, and upon the several points in issue the parties were heard at

length, and numerous authorities were cited, and it was contended for the plaintiff, with great force, I think, that when Etienne Guy, *fils*, sold to Gerard, he could give no valid title as against the *appelés*, he himself acknowledging that it formed part of his father's succession, which was all substituted, and under the law (Art. 2244, C. C.,) this bad title ought to help to establish the defects of possession which hinder prescription. I will give no direct opinion upon that, however, though no doubt it might be a very important point; but, under the circumstances, I do not think it is essential to a decision of the present case. There can be no doubt, whatever the parties themselves (that is the heirs of Et. Guy, *père*) may have done, or have thought about it, the part of the estate now in litigation was decided by the Queen's Bench not to have fallen again into the substitution after Mme. Guy (*mère*) had bought it in at Sheriff's sale, but to have formed part of her succession, and therefore the plaintiff, under his mother's will, is entitled to get what he asks unless the plea of prescription is to prevail. Without going into the question, then, whether, apart from interruption or renunciation, the possession of the late Mr. Et. Guy, *fils*, or the title he was able to give, could enable him or those who derive their rights from him to urge the thirty years' prescription, I will only look now at that part of the special answer that is founded on the alleged interruption resulting from the will of the late Et. Guy, *fils*. I have read over and over again the remarkable passage in Mr. Guy's will that has relation to this subject. I would here read it again now; but the parties must be so perfectly familiar with it, and it really seems to me so plain, that I believe I may save the time. I will only observe that, after some preliminary provisions, such as directing the payment of his debts and funeral expenses, and vesting his estate in his executors, to be afterwards named, the very first thing that seems to have been on the testator's mind was to mention this subject, to which he devotes about five closely-written pages by way of explanation of it. There is a complete recognition in this will (as well as in the title he gave) of his character of *grevé*, and consequently of the existence of the plaintiff's rights in this property; and more than that, there is a plain direction to his legatee and executors to borrow money, if necessary, to pay him. I do not think it necessary to advert to the letters said to contain a recognition by the defendants themselves of the plaintiff's rights, for either the prescription pleaded exists or it does not. I think it cannot exist in the face of the admitted character of usufructuary in the testator at the time he sold, nor apart from that, in the face of the provisions conscientiously made in his will by the late Mr. Etienne Guy in recognition of his brother's and his brother's children's rights. Therefore, I give judgment for the plaintiff, and order an *expertise* as to the value, in default of delivery.

Loranger & Co. for plaintiff.

Doutre & Co. for defendants.

Bethune & Bethune for defendant Court.

GUY v. GUY et al.

Property belonging to Substitution—Fluctuation in value—Rights of appelé.

JOHNSON, J. This is another case between the same parties, but raising altogether a different question. This time the question affects the property which was declared in the Queen's Bench to have belonged to the substitution, and the plaintiff wants to get the difference between the value awarded by the experts, and the value at the time of the death of Mr. Etienne Guy, on the ground that the plaintiff was entitled to get the property at that time. This pretension was urged in that case, and the Court, after argument, on motion, rejected it, and referred to the experts the question of the value at the time of the *expertise*, and they reported, and their report was homologated. The same experts being employed in the present case, have reported that the difference in value at these two periods of time amounts to $1,625—that is to say, that in July, 1875, the property was worth that much more than it was in June, 1878. What was referred to the experts was the actual value at the time of the reference. There can be no doubt about that; the copy of the interlocutory is here of record, as an exhibit. There is also the motion made by the plaintiff to have the value established at the previous date, and which was overruled by the interlocutory judgment. Here, then, was a distinct enunciation of a principle by one of the contending parties, and a distinct adjudica-

tion adverse to his pretensions. He could have appealed from that, and, until he does, it is *res judicata* between him and his adversary. But it is said, the right to urge the difference in value was reserved by the Judge; but it is not possible that this reservation could have been a recognition of the right which he expressly denied by the terms of his judgment ordering the valuation. At the utmost, it could only have meant to reserve the exercise of the right by action, if the right itself existed. Now, upon that I am of the same opinion as the learned Judge was, that the right does not exist, and I must say I have heard no reasoning and no authority to show that it does; on the contrary, I think I see ample reason for deciding the other way. If the defendants had chosen to give back the property instead of paying the price, they might have done it. Then, again, if the plaintiffs in that case had got the property at the time Mr. Guy died, they could not have sold it; it was entailed on their children; it makes no difference to them whether they get the thing that has since diminished in value, or whether they get the now diminished value of the thing. Action dismissed with costs.

Loranger & Co. for plaintiff.
Doutre & Co. for defendant.
Bethune & Bethune for defendant Court.

RECENT ENGLISH DECISIONS.

Husband and Wife.—By the Divorce Acts (20 and 21 Vict. c. 85, and 21 and 22 Vict. c. 108,) a husband is liable for certain statutable costs of his wife, when suing for a divorce. *Held*, that a wife's solicitor might sue him also at common law for extra necessary costs, as for necessaries.—*Ottaway* v. *Hamilton*, 3 Q. B. D. 393.

Injunction.— 1. Where the court was of opinion that the defendant was attempting to represent to the public that he was carrying on the business of which the plaintiff was proprietor, *held*, that the fact, that plaintiff had known the facts for three years before beginning suit, was no bar to his right to an injunction. It is a matter governed by the Statute of Limitations only.—*Fullwood* v. *Fullwood*, 9 Ch. D. 176.

2. A railway company contracted to purchase a piece of land of plaintiff for its road, entered and built and opened their road over it, but did not pay the price nor the interest-money on the price. In an action for specific performance, and for an injunction against running trains over the land, and for a receiver, before decree, the application for the interlocutory injunction was *held* monstrous, and refused.—*Latimer* v. *Aylesbury & Buckingham Railway Co.*, 9 Ch. D. 385.

Insurance.—The assured had information that the ship insured was in great danger of becoming a total loss, and the result was that the condition of the ship was such as to have entitled him to a claim as for a constructive total loss, and the ship was afterwards properly sold as in case of constructive total loss. He failed, on receiving his information, to give prompt notice of abandonment, and of a claim for constructive total loss. *Held*, that he could not recover from the insurers. The doctrine of notice of abandonment, in such a case, is part of the contract of indemnity.—*Kaltenbach* v. *Mackenzie*, 3 C. P. D. 467.

Jurisdiction.—A patentee of certain shells, obtained an injunction against the agents of the Mikado, a foreign sovereign, against putting some of these shells on board some war-ships belonging to the Mikado, and lying in an English port. The shells were made in Germany, and bought and paid for there. The Mikado applied to be admitted a defendant, and, having been made one, he applied, by his agent, to have the shells delivered up to him. Granted. The Mikado did not waive his rights as sovereign by becoming a defendant.—*Vavasseur* v. *Krupp*, 9 Ch. D. 351.

Limitations, Statute of.—A partnership between N. and C. terminated in 1861, when C. acknowledged a debt on balance due from him to N., of £787, and promised to pay it in a month, but had never paid it. Since then, N. had importuned him to enter into the partnership accounts and pay him; but C. had refused, and finally repudiated the debt and liability. N. brought suit, setting up these facts, and C. pleaded the Statute of Limitations by demurrer. *Held*, thet the statute was a defence, and that it could be pleaded by way of demurrer. *Miller* v. *Miller*, L. R. 6 Eq. 499, criticised.—*Noyes* v. *Crawley*, 10 Ch. D. 31.

Married Women.—An application by a woman, aged fifty-four years and six months, who had been married three years and had no children, for payment to her of a fund of which she had the life-interest, remainder to her children, was refused.—*Croxton* v. *May*, 9 Ch. D. 388.

RECENT UNITED STATES DECISIONS.

Agent.—A voluntary association of many persons adopted by-laws, assumed a name, chose officers and directors, divided their joint property into shares, and organized themselves like a corporation, but were not incorporated. By vote, they authorized the directors to borrow money; and the directors did so, and by their authority the treasurer gave a promissory note for the money, purporting to be the promise of the association, and signed "A. A., Treasurer." *Held*, that all the members of the association were liable on the note.—*Walker* v. *Wait*, 50 Vt., 668.

Arbitration.—Arbitrators under a submission *in pais*, containing no agreement as to costs, included in their award a provision that one party should pay their fees. *Held*, a valid award.—*Brunell* v. *Everson*, 50 Vt., 449.

Carrier.—1. A charge by a common carrier to one person of a greater sum than he charged to another for transporting the same kind of freight during the same time, *held*, not necessarily unreasonable or improper as matter of law.—*Johnson* v. *Pensacola & Perdido R. R. Co.*, 16 Fla. 623.

2. In an action against a railroad company to recover for the loss of a passenger's trunk, it appeared that the passenger and trunk were carried free. *Held*, that the passenger could not charge the company in an action on the case, without proof of such negligence as would charge any other gratuitous bailee; nor in an action of assumpsit, in any case.—*Flint & Pere Marquette Ry. Co.* v. *Weir*, 37 Mich. 111.

Check.—1. A memorandum on the face of a check recited that it was given "to hold as collateral for oil." *Held*, that the cashier of the bank on which it was drawn had no authority to bind the bank by certifying it as good.—*Dorsey* v. *Abrams*, 85 Penn. St. 299.

2. Ten days after a check was made, the bank on which it was drawn stopped payment and became bankrupt, the makers having meantime drawn out all their balance. The check was never presented at the bank. *Held*, that the makers were not discharged, though the check would have been paid by the bank if presented, and though the balance drawn out by them was afterwards recovered back by the assignee of the bank.—*Kinyon* v. *Stanton*, 44 Wis. 479.

Consideration.—A soldier, during the war, by order of his officer, took a horse for use in the army, and afterwards promised the owner to pay for him. *Held*, that the soldier was not liable for taking the horse, and therefore that his promise was without consideration.—*McCord* v. *Dodson*, 10 Heisk. 440.

Damages.—1. Goods were sold with warranty of quality, the seller having notice that the buyer intended to ship them to a foreign market. *Held*, that, for a breach of the warranty, the buyer might recover as damages the difference between the value of the goods contracted for and the value of the goods delivered in the foreign market at the time the goods arrived there.—*Lewis* v. *Rountree*, 79 N. C. 122.

2. Action to recover for personal injuries. *Held*, that the defendant could not show, in reduction of damages, that the plaintiff, being a physician, receeived medical attendance free of charge.—*Indianapolis* v. *Gaston*, 58 Ind. 224.

Evidence.—1. Indictment for rape. There was no evidence of the offence, except statements of the prisoner in conversation, tending to show that he was guilty. *Held*, not sufficient for a conviction.—*Matthews* v. *The State*, 55 Ala. 187.

2. Under an indictment for keeping a bawdy-house, evidence of the general reputation of the house is not admissible.—*Woosier* v. *The State*, 55 Ala. 217.

3. In a criminal prosecution, a letter from the prisoner to his wife, produced by a third person, is admissible in evidence against him.—*State* v. *Buffington*, 20 Kans. 599.

Exemption.—Property of a partnership cannot be claimed by the partners individually, as exempt from levy under legal process against them individually.—*Giovanni* v. *First Nat'l Bank of Montgomery*, 55 Ala. 305.
