ABSTRACTS OF RECENT ENGLISH CRIMINAL CASES.

Bail—Charge of Murder.—Where justices had committed a person to gaol on a charge of murder and subsequently a coroner's jury acquitted him of the charge, the Court granted a rule to be served upon the justices and the prosecutor for admitting the prisoner to bail in the country. *R.* v. *Blackburn*, 20 L. T. 227, Bail C. (Per Erle, J.)

Murder—Duel.—Where there is a verdict of a coroner's jury of guilty of wilful murder against parties, and there is evidence upon the depositions to support that finding, this Court will not admit them to bail, though the murder appears to have been committed in a duel, and though the evidence may not be conclusive of guilt. *Reg.* v. *Barthelemy and Mornay*, 20 L. T. 125. (Q. B.)

Evidence—Bigamy—Proof of Scotch Law of Marriage.—Upon an indictment for bigamy, it appeared that the first marriage took place in Scotland. The sister of the woman stated that she was present at the ceremony, which was performed by the minister of a congregation in a private house; but whether he was of the kirk or not she did not know, that she herself had been married in the same way, and that people in Scotland were always married in private houses, and that the prisoner and her sister afterwards lived together as man and wife: Held, not evidence of the law of Scotland, sufficient to support a conviction. *Reg.* v. *Povey*, 16 J. P. 745; 22 L. J. 19, M. C. (Court of Cr. App.)

Jurisdiction—Order of delivery up of Money found on person of Prisoner.—The judge refused to make an order for the delivery to a prisoner of money found on his person; for *semble*, neither judge nor justice of the peace has power to make such an order. *Reg.* v. *Pierce and others*, 20 L. T. 182. (Per Williams, J.)

Larceny—Master and Servant—Accessory.—S. was entitled to receive from the master of M. a certain sum for bags made by him, and the custom was, that the bags when furnished were left at the warehouse door of M.'s master, and S. was paid according to the number found there. M., in concert with S. took out of his master's warehouse bags of his master, and laid them before the door of the warehouse at the place where the bags of S. were usually deposited: and S. came and demanded the money for

them as new bags: Held, that M. was guilty of larceny of the bags, and that S. was an accessory before the fact. (See R. v. Hall, 3 N. S. Cas. 407.) *Reg.* v. *Manning and Smith*, 16 J. P. 760; 20 L. T. 116; 22 L. J. 21, M. C.; 17 Jur. 28. (Court of Cr. App.)

Property left by passenger in Railway Carriage.—The law with regard to the finder of lost property does not apply to the case of property of a passenger accidentally left in a railway carriage, and found there by a servant of the Company; and such servant is guilty of larceny, if, instead of taking it to the station or superior officer, he appropriates it to his own use. *R.* v. *Pierce and others*, 20 L. T. 182. (Per Williams, J.)

Taking—Animus furandi.—The prisoner had twenty-nine black-faced lambs, which he put into a field of C. where B. had two white-faced lambs, The next morning he left the field with his flock, taking, unknown to him, one white-faced lamb as well as the twenty-nine black-faced. On the same day he tried to sell the flock, and during the bargaining it was pointed out to him that there were thirty lambs, and not twenty-nine as he had said. He nevertheless sold the thirty, and was tried for and convicted of larceny, the jury finding that he had committed a felony at the time the actual number was pointed out to him: Held, that the conviction was proper. *Reg.* v. *Riley*, 17 J. P. 69; 20. L. T. 228. (Court of Cr. App.)

Misdemeanor—Procuring indecent Prints with intent to Sell.—A count in an indictment charging defendant with having possession of indecent prints with intent afterwards to sell them, is bad, (see R. v. Heath, R. & R. C. C. 184;) but a count charging defendant with procuring indecent prints with intent to sell is good, as the procuring is an act done. (See R. v. Fuller, R. & R. C. C. 308.) *Reg* v. *Dugdale*, 20 L. T. 219, (Q. B.)

Perjury—Affidavit to hold to Bail—Form of Record—New Trial—Using past tense for present tense.—An affidavit to hold to bail may be sworn before the issuing of the writ in the action; and therefore, an indictment for perjury committed in such affidavit need not state that any action was pending. In entering an award of a new trial upon the record of the proceedings upon an indictment for misdemeanor, it is unnecessary to state the reasons for which the new trial was granted; it is enough to say, "because it appears to the Court that the said verdict was unduly given, therefore the said verdict is by the said Court here vacated and made void, and all other process ceasing against the jury before empanelled, the sheriff, &c., is commanded that he cause a jury anew thereupon to

come, &c. In setting forth an indictment the past tense was used; "it was presented," instead of "it is presented;" Held, immaterial. *King* v. *Reginam*, 3 Cox, Cr. Cas. 561; 14 Q. B. Rep. 31 (Ech. Ch.)

Venue—Larceny—Railway Train.—Where the evidence is consistent with the fact of an article having been abstracted from a railway carriage, either in the course of the journey through the county of A. or after its arrival at its ultimate destination in the county of B., and the prisoner is indicted in A. under the statute of 7 Geo. 4, c. 64, s. 13, the case must go to the jury, who are to say whether they are satisfied that the larceny was committed in the course of the journey or afterwards. *R.* v. *Pierce and others*, 20 L. T. 182. (Per Williams, J.)

Lovell's Dig. Feb. 1853.

Abstracts of Recent Decisions in the Supreme Court of the United States.

Proof of Foreign Law, &c.—A copy of the "code civil" of France, from the Library of Congress, received in exchange from the French Government, and purporting to be printed by authority, is sufficient evidence of the Laws of France.

A decree of the nobility of the government of Grodno, and a decree of the Court of Kroburgh, in the province of Lithuania, properly authenticated, were received in evidence, as competent to prove the pedigree of the heirs of Kosciusko,—they are judgments in rem, and evidence every where of the facts adjudged.

Sureties on an administration bond given under the Act of Congress of 1846, c. 8, authorizing the Orphans' Court to take additional security in certain cases, are bound for all the assets admitted to be in the hands of the administrator by his account filed—without regard to the question of whether they had been previously wasted by the administrator. *Zollkawsher's Adm'r* vs. *Bomford, et al.*

Copy-right—Sale of engraved plate.—A sale by the Sheriff of the engraved plate of a map, does not carry the copy-right; which is not the subject of levy on an execution. *Stevens* vs. *Cady.*

Collision.—In cases of accidental collision, when neither is in fault, each party bears his own loss. *Ship Washington* vs. *Ship Mary Frances.*

Memorandums within the Statute of Frauds—The following instrument, signed with the initials of the agent of plaintiff and of defendant, was decided to be a sufficient memorandum in writing to take the case out of the Statute of Frauds.

"Sept. 19. W. W. Goddard, 12 mos.

300 bales S. F. drills	- - -	7¼
100 cases blue "	- - -	8¾

Cr. to commence when ship sails; not after December 1st; delivered free of charge for truckage.

R. M. M.
W. W. G.

The blues if color satisfactory to purchaser." *Salmon Falls Manufacturing Company* vs. *Goddard.*

Unconstitutional Act.—The following Act of the Legislature so far as it affected cases pending, is unconstitutional and void.

Sec. 1. No real or mixed action for the recovery of any lands in this State shall be commenced or maintained against any person in possession of such lands, where such person or those under whom he claims have been in actual possession for more than forty years, and claiming to hold the same in his or their own right, and which possession shall have been adverse, open, peaceable, notorious, and exclusive.

Sec. 2. This act shall take effect at the end of one day, from and after its approval by the Governor. *Webster* vs. *Carpen.*

Right of State to grant Monopoly.—A State may grant the sole right to navigate a river with steamboats, for a term of years, to one person, in consideration of his making improvements in the same, where the river and the navigation is wholly within the state, and cannot be entered from the sea. Another boat cannot interfere with such monopoly by taking out a coasting license. *Veasy* vs. *Moore.*

Patent—Manner of the demand.—Any person has a right to demand a copy of a patent from the Commissioner of Patents, on tender of legal fees; and an action will lie against the officer for refusing it.

The officer is not bound to comply with a demand which is accompanied with personal insult and abuse; but if another demand be made in a proper manner, the officer cannot withhold a copy till an apology be made for the previous insult. Ill temper and bad manners do not work a forfeiture of a man's civil rights. *Bayden* vs. *Burke.*

Sale of Marshal out of office valid.—A sale of land by a Marshal on a venditioni exponas, after his removal from office, and a new Marshal appointed is not void. But such sale confirmed by the Court, and a deed made by the new Marshal, is valid. *Doolittle* vs. *Bryan.*

When re-argument will be ordered.—The Supreme Court will not order the re-argument of a case once decided, on motion of Counsel, but only where some one of the majority of the Court expresses a doubt and desires a re-argument. It makes no difference that the decision of affirmance was by a divided Court. *Aspden's Adm'r* vs. *Aspden.*

Selections from 1 *Swan's Tennessee Reports.*[1]

Attachment—Levy of—Its effect.—The levy of an attachment does not divest the debtor of the property levied upon, it merely creates a specific lien upon the property, which cannot be sold until after judgment against the debtor. *Snell & McGavock* vs. *Allen,* 208.

Carrier—Liability of, for bank bills delivered to him.—The liability of a carrier for the loss of bank bills delivered to him to be carried from one point to another, will depend upon the fact whether or not he received the bank bills to carry them for compensation; and though there be no stipulated price for the service, yet, if the usage in such cases implies an agreement to pay the carrier for such service, he will be liable for any loss that may occur, unless caused by inevitable accident or the public enemies. *Kirtland* vs. *Montgomery,* 452.

Chancery—Charities.—The duties and powers which, in England, belong to the prerogative of the Crown, in reference to charities, and which are vested in the Lord Chancellor by the King's warrant under his sign manual, do not exist in our Chancery Court. *Dickson et als.* vs. *Montgomery et als.,* 348.

Charities—When gifts for charitable uses will be held valid.—If the fund be vested in a trustee, to be managed and controlled by him for a lawful, definite, charitable use, the gift will be valid, though there be no

[1] We are indebted, for the following abstracts, to William G. Swan, Esq., State Reporter of Tennessee, who has kindly furnished us with the sheets of his forthcoming volume of Reports, the first since his appointment.

person in being, capable of suing for the enforcement of the trust. *Dickson et als.* vs. *Montgomery et als.*, 348.

Construction of Writings—Will.—The testatrix in her will declared her "intention to provide for the personal comfort and independence of her daughter, Martha W. Keeble, during her natural life." After setting apart certain property to this end, the will proceeds: "But it is my will and intention that all the property, real and personal, and all the money herein set apart to her, the said Martha W., shall be for her sole and separate use during her natural life, free from any debts or charges of any future husband she may have. My object is to make a provision for her, and not to postpone her interests to those of my remote descendants, and if, for any cause, it becomes necessary for her ease and comfort to use any portion of the principal of the property and money herein set apart for her, it is my wish that it should be done. It is my wish that she should have the full use and enjoyment of all this property and money during her natural life; and if she marries again, and has other children, or dies, leaving those only she now has, in either event it is my will that the property and money, or the part remaining after providing for her in the manner herein declared, shall go to her children, or their descendants, according to the statute of descents and distribution of Tennessee." Held, that under this clause of the will, Mrs. Keeble took only a life estate, with a limited power of disposal upon the happening of the contingency referred to. *Pillow Ex'r* vs. *Rye & Wife et als.* 185.

Construction of Writings—Gift to Wife—Husband's Marital right.—The testator gave to his wife, by his will, certain property, with this condition annexed: "The above mentioned property is only to belong to my wife during her lifetime or widowhood. Now, in case my wife should marry, I allow all the above named property to be entirely under the control of my executors, for the use and benefit of my wife during her life;" and then the will proceeds to dispose of the property in remainder. This is not a gift of the profits and income of the property to the sole and separate use of the wife. The provision is nothing more than the interposition of a trustee, the better to guard the property from waste, and to preserve it for those in remainder. *Woods* vs. *Sullivan*, 507.

Discontinuance.—After issue is joined, though a cause slumber seven years without any notice taken of it, either upon the docket or minutes of the court, it is, by the general intendment of law, continued from term to to term. *Pierce and Pittman* vs. *Bank of Tennessee*, 265.

Error, Writ of—Bill of Exceptions.—The bill of exceptions taken upon the trial of a cause, by one of the parties only, is made a part of the record by the court, and either party appealing in error, or prosecuting a writ of error, may assign errors thereupon. *Williams* vs. *Bowdon*, 282.

Executor—Bequest of perishable property for life, with remainder over.—In general, when perishable property is given by will to one for life, with remainder to another, it is the duty of the executor to sell the estate and vest the fund, the interest on which only will belong to the person having the life estate. But when the will indicates the intentions of the testator to be, that the person having the particular estate shall enjoy the property in specie, no such sale is to be made. *Woods* vs. *Sullivan*, 507.

Feme Covert—Gift to by deed—Power of Disposition.—A gift by deed of personal property to a *feme covert*, "during her natural life, and then to whomsoever she may by deed or will appoint," restrains her power of disposition to these two modes; for where property is given to a married woman, to her separate use, and a mode of disposition is prescribed in the instrument creating the estate, the settled rule of law in Tennessee is that the *feme covert* can only dispose of the property in the mode indicated. *Ware et als.* vs. *Sharp*, 489.

Fraud—Misrepresentation.—If the vendor of a horse, with actual knowledge of his defective eyes, merely suggests a doubt as to their soundness, this is no less *suppressio veri* and *suggestio falsi*, than if no such doubt were intimated, but is rather an aggravation of the fraud. *Baker* vs. *Seahorn*, 54.

Homicide—Evidence—Charge to jury.—If, during a quarrel, immediately preceding the fight, between the prisoner and the person slain by him, the deceased charged that the prisoner had "for some time been mad at him," and stated facts to sustain his charge, but which were denied at the time by the prisoner, it is the duty of the Circuit Court on the trial, to instruct the jury, that the statement of facts, by the deceased, is no evidence of their truthfulness, and that such statement should only be regarded by them as part of the *res gestæ*, to show under what circumstances the conflict between the parties commenced. *Haile* vs. *The State*, 248.

Indictment—Lewdness.—An indictment for lewdness should charge that the acts constituting the offence were openly and notoriously committed. *State* vs. *Moore*, 136.

Indictment—Misnomer.—The middle name of a defendant, if stated in an indictment, either in full or by the initial letter, must be correctly stated. *The State* vs. *Hughes*, 261.

Limitation of Actions—Operation of the Statute where several have a joint right of action—Disability to sue—Infancy.—Where a right of action accrues to several who are minors at the time, all of them being within the saving of the statute of limitations, they will so continue until all are free from disability, but if a right of action accrue to several, one of whom is free from disability at the time, all will be barred, unless the action be commenced within the time fixed by statute. *Wells et als.* vs. *Ragland*, 501.

Manslaughter.—It is error in the Circuit Court to instruct the jury, in a prosecution for murder, that "if the prisoner and the deceased engaged in a fight, neither having a deadly weapon to be used in the conflict, but in the progress of the combat, the prisoner's *reason being temporarily dethroned*, and acting upon the passion thus aroused, he slew the deceased, the killing would be but manslaughter." From such language as this, the jury may infer that no *sudden heat*, short of the *dethronement of reason*, will mitigate the killing to manslaughter, and thus be misled. *Haile* vs. *The State*, 248.

New trial—In criminal cases can be had only upon that count of the indictment on which the prisoner was convicted.—Although the same offence be charged in different forms in two counts of an indictment, yet, if the prisoner be acquitted upon one count and convicted upon the other, and a new trial is granted in general terms, he cannot again be put to answer that count upon which he was acquitted. *Campbell* vs. *The State*, 9 Yerg. 333. *Esmon* vs. *The State*, 14.

New Trial—Felony—Separation of Jury.—If the jury, pending the trial of a felony, disperse, though with the consent of the prisoner, a new trial will be awarded. *Wiley* vs. *The State*, 256.

Nuisance—Powder house.—A powder house, located in a populous part of a city, and containing stored therein large quantities of gunpowder, is *per se* a nuisance. *Cheatham et als.* vs. *Shearon*, 213.

Oath—Administered in presence of the court.—An oath administered to a witness, pending a trial, by one who is acting as an assistant of the clerk, at his request, is presumed to have been done with the assent of the pre-

siding judge, and therefore properly administered. *Stephens* vs. *The State*, 157.

Obscene Language—Indictable.—The utterance of obscene words in public, being a gross violation of public decency and good morals, is indictable. *Bell* vs. *The State*, 1 Am. Law Rep. 367.

Obscene Language—Evidence.—In a prosecution for the utterance of obscene language in public, it is not necessary that the words should be proven exactly as charged to have been spoken. *Ibid.*

Parties—Negotiable Paper.—When the holder, after transfer, may sue in his own name.—The holder of a promissory note, made payable to "bearer," is, by the mere transfer of the payee, without endorsement, vested with the legal title to the paper, and may support an action thereon in his own name; the payee being no longer considered a party to the paper. *Smyth* vs. *Carden.*

Partners—Negotiable Paper.—Upon the dissolution of a partnership, the partners may agree that one of them shall become the owner of a particular promissory note, payable to the firm, and upon this agreement, and without any assignment of the note, the property therein is vested in the partner to whom it is thus delivered, and he may afterwards transfer it, by delivery merely, to another person. *Hickerson* vs. *McFaddin & Moore*, 258.

Perjury—Materiality of the false swearing.—If, on the trial of a charge of assault and battery, which has in fact been committed, a witness falsely testifies to such facts as aggravate the battery, such false testimony is material and is perjury. *Stephens* vs. *The State*, 157.

Professional Skill—When surgeon may recover for services.—Though a surgical operation be not performed with the highest degree of skill, or might have been performed more skillfully by others, yet, if it be of service to the patient, the surgeon is entitled to adequate compensation. *Alder Adm'r* vs. *Buckley*, 60.

Seal.—The word "seal" affixed to the name of a party who signs an instrument of writing purporting to be a deed, is as clearly indicative of an intention to execute a sealed instrument, as would be a seal or scroll, and is, therefore, sufficient to constitute the instrument a deed. *Whitley* vs. *Davis' lessee*, 333.

Tenant for life—Accessions to and produce of a gift for life, with re-