ABSTRACTS OF RECENT ENGLISH CASES.

CRIMINAL LAW.

Larceny—Asportation—Diverting gas from the meter—Penalty imposed by local act no reduction of offence.—The prisoner had contracted with a gas company for a supply of gas. The quantity consumed was to be measured by a meter rented by the prisoner of the company, and was to be paid for according to such measurement. The gas was conveyed from the company's main through an entrance pipe (the property of the prisoner) to the meter, and from thence, by another pipe, called the exit pipe, to the burners. The prisoner, by inserting a connecting pipe into the entrance and exit pipes, diverted the gas from the meter, and thereby avoided paying for the full quantity of gas consumed: *Held*, that this was larceny of the gas; that there was a sufficient severance of the gas, at the point of junction of the connecting pipe with the entrance pipe, to constitute an asportation; that the property and possession of the gas were in the company; and that it was immaterial whether the service pipe was the property of the prisoner or of the company. *Held also*, that the penalty for improperly diverting the gas, given by the local act of the company, must be considered only as an additional punishment, and did not reduce the offence below the grade of felony. *Reg.* vs. *White*, 17 Jur. 536; 21 L. T. 159; 22 L. J. 122, M. C.; 17 J. P. 391; 1 Com. L. Rep. 489. (Court of Crim. App.)

Embezzlement—Evidence.—Upon an indictment for embezzlement, the evidence of dishonest dealing with the money of the prosecutor was that the defendant, who was in his service, had received a cheque, which he was to get cashed, and lay out the proceeds in the market; that he did cash it, but did not lay out the proceeds as he ought to have done; and that in the prosecutor's books he gave a wrong account of the manner in which the money had been expended. The jury found the defendant guilty of larceny, and acquitted him of the embezzlement: *Held*, that the prisoner had been improperly convicted of larceny, and that a conviction for embezzlement might have been sustained. *Reg.* vs. *Goodenough*, 21 L. T. 160; 17 J. P. 374; 1 Com. L. Rep. 509. (Court of Cr. App.)

Murder—Manslaughter and misadventure—Definition of "malice aforethought"—Words no provocation in law.—If a blow without provocation

is wilfully inflicted, the law infers that it was done with malice aforethought, and if death ensues, the offender is guilty of murder, although the blow may have been given in a moment of passion. Irritating language by the deceased forms no provocation in law, so as to reduce the crime to manslaughter. The prisoner was indicted for the murder of his wife, and it appeared that on his return home late at night drunk, the deceased made use of some taunting language to him, upon which he took down a sword from the shelf, and unsheathed it, and struck her with the flat part of it, and she then attempted to reach the door of the room through which her daughter, who was on the outside, endeavored to pull her, the prisoner following her. She immediately afterwards screamed, and on being pulled out of the room by her child, a wound on the left side was observed, of which she died in a few hours. The defence was that the deceased in resisting the efforts of her daughter to remove her from the room, fell back on the sword, which the prisoner was too much intoxicated to know was unsheathed. Cresswell, J., directed the jury, that if the prisoner used the weapon wilfully, that was such malice aforethought as the law required, and he was guilty of murder; but if the deceased rushed on the sword accidentally, he must be acquitted altogether, and if the wound was inflicted in a struggle at the door, the prisoner having the sword in his hand, but without any intention on his part to use it, then there was a careless use of the sword which made him guilty of manslaughter. *Reg.* vs. *Noon*, 6 Cox, Cr. Cas. 137. (Per Cresswell, J.)

Perjury—Comparison of handwriting by the jury.—The defendant was indicted for perjury, alleged to have been committed by him on the trial of an action in the County Court, by swearing that the signature to a document was not in his handwriting. The judge of the County Court made the defendant write his name in Court, and impounded the genuine, as well as the alleged forged signature: *Semble*, that on the trial for perjury, the jury might look at and compare the two signatures. *Reg.* vs. *Taylor*, 6 Cox, Cr. Cas. 58. (Per Williams, J.)

Corroboration—Materiality to the issue.—The prisoner was charged with perjury for having falsely sworn before magistrates at petty sessions, that one D. R. was the father of her illegitimate child. At the trial of the prisoner the imputed father, D. R., swore that he never had intercourse with her. In corroboration of D. R., a witness was called who swore that the prisoner had told witness, at a time when she generally denied being with child, that "D. R. had never touched her clothes:" *Held*, that as the negation was made by the prisoner at a time when she generally denied

being with child, it was so far part of such general denial that, although it could not be altogether withdrawn from the jury, it was not a corroboration of D. R.'s testimony, on which alone they could convict her. Another assignment of perjury was that, on the same occasion, the prisoner had falsely sworn that her master, who was uncle of D. R., had promised her that he would raise her wages, and allow her to lie-in at his house, if she would swear the child to a person other than his nephew, D. R.: *Held*, that such statement was not material to the issue, so as to constitute the crime of perjury. *R.* vs. *Eleanor Owen*, 6 Cox. Cr. Cas. 105. (Per Martin, B.)

Judge's notes—Advocate—Witness—Indictment, form of—Contra formam statuti.—In support of an indictment for perjury, committed on the trial of a plaint in a County Court, it is not necessary to produce the judge's notes, if proof of the perjury can be established by witnesses who were present at the trial. *Semble*, that it is no objection to a witness called for that purpose, that he acted as advocate and attorney against the prisoner at the trial of the plaint in the County Court. An indictment for perjury committed by a party examined at the hearing of a plaint in a County Court as a witness in his own behalf, need not conclude against the form of the statute. *R.* vs. *Thomas Morgan*, 6 Cox, Cr. Cas. 107. (Per Martin, B.)

Practice—Coroner's inquisition—Quashing—Right to begin.—Where, on a motion to quash the inquisition of a coroner's jury finding certain persons therein named guilty of wilful murder, the Court has, for the purpose of hearing counsel on behalf of the next of kin of the deceased, granted a conditional order, the party showing cause is not entitled to begin; but the counsel for the crown will move to make absolute the order as if moving an original motion on notice. Though this Court may quash an inquisition where a verdict has been found against a person confessedly innocent, yet it will not interfere when there has been any evidence, even though it may be insufficient to warrant the finding of the jury. *In the matter of the Six-Mile Bridge Inquisition*, 6 Cox's Cr. Cas. 122. (Q. B., Ir.)

Discharge of recognizances.—Where a prisoner has been committed for trial at the assizes, and parties bound over by a magistrate to prosecute and give evidence, the judge will not discharge the recognizances on an intimation that the attorney-general does not think it a proper case for prosecution. *Semble*, the proper course is for the attorney-general to enter a nolle prosequi. *R.* vs. *Freakley*, 6 Cox, Cr. Cas. 75. (Per Williams J.)

Opening statement of counsel.—*Semble*, where a prisoner is defended by counsel, and the facts of the crime imputed to him are few and simple, although the practice in some such cases has been for counsel to enter at once on the examination of witnesses, without previously stating the case to the jury, an opening address is generally speaking advantageous, and should therefore be made. *Re John Morgan*, 6 Cox, Cr. Cas. 116. (Per Talfourd, J.) *Month. Dig.*

Abstracts of Decisions of the Supreme Court of Pennsylvania, at Pittsburgh, 1853.[1]

Amendment—Damages—Practice.—Where, in assumpsit, the damage is laid at $6,000, and, by reason of interest accruing between the bringing of the action and the trial, the verdict exceeds that amount, the plaintiff may amend in the Supreme Court by increasing the damage laid.—*Miller* vs. *Weeks.*

Attorney at Law—Arbitrament—Appeal.—Where an attorney improperly becomes bail for an appeal from an award of arbitrators, the appeal is not void, and cannot therefore be struck off; but the appellant ought to have a reasonable time after objection made to enter proper bail.—*Short* vs. *Rudolph.*

Bail—Landlord and Tenant.—In a proceeding by a landlord against his tenant to recover the possession for non-payment of rent, the following engagement, entered on the record of the justice and signed by the bail, was declared on as a recognizance, and held good as such: "I become bail absolute in this case, conditioned for the payment of all rents that may accrue, in case that the said judgment shall be affirmed, and also for all rent that has accrued or may accrue up to the time of final judgment."—*Hardy* vs. *Watts.*

Criminal Law—County Commissioner.—When a man is found guilty

[1] We have obtained for the present number, abstracts of a few of the cases decided at the late term of the Supreme Court at Pittsburgh. We expect to be able to make a considerable addition to the list in our next number.—*Eds. Am. Law Reg.*

of a criminal offence, and sentenced to pay a fine, the County Commissioners have no power to take bail for the payment thereof, and discharge him; and the sheriff ought not to obey their order of discharge.—*Schwamble* vs. *The Sheriff.*

Costs—Justice.—In an action of assumpsit for unskilfulness in performing a contract, when the verdict does not exceed $100, the plaintiff is not entitled to costs.—*Lytle* vs. *Morris.*

Executor—Trust.—Where an administrator fails, with funds of the estate in his hands not kept separate from his private funds, the creditors and distributees of the estate have no right to a preference over the individual creditors.—*Cunningham's Estate.*

Evidence—Comparison of Hands.—Proof of signature by comparison merely is not legitimate, and therefore the the testimony of a witness who has no recollection of the handwriting, and can testify only by comparing a signature known to be genuine with the one to be proved, is not admissible.—*O'Connor* vs. *Layton.*

Guardian—Exception to Accounts.—Where one person is guardian of several minors, his settlement of their accounts ought to be entered severally in Court; and even when they are entered as one proceeding, they must be treated as several, and the exceptions filed by one of the wards, and the proceedings thereon cannot affect the account as to the others.—*Wm. Gaston's Appeal.*

Husband and Wife—Slander.—Where husband and wife sue for the slander of the wife, it is a good plea in bar, that the husband had himself communicated to the defendant, the slander complained of.—*Tibbs* vs. *Brown.*

Justice—Jurisdiction.—An action of assumpsit for carelessness in doing work, is within the jurisdiction of a justice of the peace, if the amount claimed do not exceed $100. The case of *Zell* vs. *Arnold,* 2 Pa. R. 292, decides only that if an action for such an injury be in tort, the justice has no jurisdiction.—*Conn.* vs. *Stumm.*

Justice—Former Action.—Where, after a hearing before a justice of the peace, a plaintiff discontinues his suit, this is no bar to a subsequent suit.—*Riddle* vs. *Tidball.*

Lands—Settlement.—If one enters upon vacant land as a settler, claiming 400 acres, and then sells 100 acres thereof, he may afterwards extend his remaining boundaries so as to include another 100 acres in a different

direction, provided he interferes with no other person, and a patent obtained in pursuance of such extension of boundaries, will be good.—*Syphers* vs. *Meighan.*

Mortgage—Execution.—Where four mortgages and bonds on the same property, and payable in different years, were recorded on the same day, and the one first payable was first assigned, and afterwards the others, and then the property was sold at Sheriff's sale for less than the whole amount of the mortgages. *Held,* that each mortgage was entitled to a pro rata dividend.—*Carnahan* vs. *Dyer.*

Partnership—Bill of Exchange.—Where one of several partners draws a bill of exchange in the firm's name, on himself, and accepts it and gets it discounted, it is prima facie for his own use, and the partnership is not liable without evidence that it was for their benefit.—*Cooper* vs. *McCluskan.*

Power—Devise—Mortgage.—A devise that "all my estate real and personal, and everything that belongs to me, shall be given into the hands of my wife for her use and maintenance, as long as she lives, she must not give or sell anything only for her own good and support, and for the good of the place, or mortgage if she needs," was held sufficient to authorize the widow to mortgage in fee for her maintenance, even to the whole value of the land, if necessary, though there was a devise of a remainder in fee to a son.—*Edmonson* vs. *Nichol.*

Practice—Affidavit of Defence.—An affidavit of defence is in time, though a previous insufficient one had been filed and objected to, and the question of its sufficiency argued, but not decided.—*Bloomer* vs. *Reed.*

Practice—Deposition—Error.—The absence of a witness which will justify the reading of his deposition, is a question of fact to be decided by the Court below, and this Court will not reverse for error, except in a very plain case.—*O'Conner* vs. *Layton.*

Practice—Execution—Auditor.—Where a party, without probable cause, raises a dispute as to the distribution of money in court, and occasions the appointment of an auditor, the expenses of the audit ought to be charged to him. *Larimer* vs. *Bridenthal.*

Replevin.—When one mortgages his store of goods as security for an engagement, and then refuses to perform the engagement or deliver possession of the store, replevin will lie. *Boyles* vs. *Rankin.*

Road.—Where a view of a road has been confirmed without fixing the width of the road, the confirmation will be reversed, and the record remitted, in order that the omission may be corrected. *Road in Indiana Township.*

Schools—Contract.—School directors ought to keep a record of all their proceedings; but this is a duty they owe to their constituents, and not to all other persons; and the want of such record does not make void a contract made by them on behalf of the district. *School Directors* vs. *Ray.*

Set-off.—Where several persons are assignees of a debt in different proportions, and are severally sued by the debtor on other claims due by them, each may, in such suit, set off so much of the one assigned debt as is due to him. *Smith* vs. *Myler.*

Sheriff—Surety.—The surety of a sheriff is not released from liability for claims due to the county by the sheriff, by reason of the neglect of the county commissioners to retain other moneys due by the county to the sheriff, when they had opportunity. The county is part of the public, and not chargeable with such neglect of its officers. *Washington Co.* vs. *Marshman's Bail.*

Sheriff—Action for False Return—Damages.—When a sheriff, with a fi. fa. in his hands, refuses to levy upon goods pointed out to him as the defendant's, which are in fact his, he is, in an action for false return of nulla bona, liable for nominal damages at least, and beyond that for all damages which the plaintiff in the execution suffered by means of his refusal. The amount of the plaintiff's execution is not the measure of damages; for there may have been other previous executions in the sheriff's, hands that would have taken all the proceeds, even if the levy had been made according to the instructions. *Forsyth* vs. *Dixon.*

Slander.—It is essential to constitute slander, that the words should involve both legal and moral turpitude; and both these elements are included in a charge against an administrator, that he had smuggled away from the appraisers a part of the personal estate of the intestate. *Beck* vs. *Stitzel.*

Statute of Limitations—Acknowledgment.—An acknowledgment of a debt to a stranger raises no implication of a new promise, so as to take the case out of the statute of limitations. *Anderson* vs. *Allison.*

Surety—Statute of Limitations.—Where a note is given by principal