was not proved, for I should have had great difficulty in saying that the company in that case were liable.

CROWDER, J. — I also think that the judge ought not to have nonsuited the plaintiff. There was evidence that the bag was given to the company to be conveyed and delivered, and it appeared that the usual mode of delivery adopted by them was, that when the luggage arrived at the terminus, the company's porters, if required so to do, assisted in carrying it and placing it on cabs within the station; and that assistance, as it seems to me, was included in the company's contract, for no gratuity is given by the passengers to the porters for it, but it is included in the fare paid at the commencement of the journey, and it is, of course, an advantage to the company to have the luggage removed from the platform as speedily as possible. The only distinction between this case and *Richards* vs. *The London and South Coast Railway Company* is, that the plaintiff here had the bag in his hand on the platform after the arrival of the train, but as it is not found that he had elected to treat that as a complete delivery, and as he intended to have a cab, and gave the bag to one of the company's porters to deliver to a cab, and, for anything that appears to the contrary, the porter did not deliver it, there was no delivery according to the contract. The case is much the same, as put by Mr. Lush, as if the plaintiff had got out of the carriage without the bag, and the porter had then handed it out. I think, therefore, that this rule should be discharged. Rule discharged.

ABSTRACTS OF RECENT ENGLISH DECISIONS.

Affidavit.—The taking of an affidavit is a ministerial, not a judicial act. *Kerr* vs. *The Marquis of Ailsa*, 1 Macq. Scot. App. Cas. 736. (H. of L.)

Criminal Law—Disposing of the body.—There need not be a final disposing of the dead body of the child to constitute an offence within the 9 Geo. 4, c. 31, s. 14, but it is sufficient if there be only a temporary disposition of the body, with the intention of concealing the birth. (See

Reg. *vs.* Goldthorpe, 2 Moo. C. C. 244.) *Reg.* vs. *Jane Perry*, 1 Jur. 408, N. S. (C. C. R.)

Criminal Law—False pretences—Want of sufficient allegation of false pretence.—The indictment alleged that the defendant falsely pretended a sum of money, parcel of a certain larger sum, was "due and owing" to him for work which he had executed for the prosecutors: Held, that this was not an allegation of false pretence of an existing fact, as the allegation in the indictment might be satisfied by evidence of a mere matter of opinion, either as regarded fact or law; and therefore that the indictment was bad. *Reg.* vs. *Henry Oates*, 1 Jur. 429, N. S.; 19 J. P. 309. (C. C. R.)

Contract—Warranty—Breach.—The seller of a book-case warranted it to be an ancient book-case, but it was a modern one. The purchaser refused to receive it, or pay for it, notwithstanding he had received and paid for other goods bought of the same seller at the same time: Held, that the purchaser was not liable. *Woodgate* vs. *Welton*, 16th Nov. 1854. (Exch.) Lovell's Dig. 1855, p. 23.

Contract—Warranty.—An undertaking in a general contract, not for the sale of specific flour, but of a given quantity of flour, that it shall be of a certain kind or quality, is not a representation but a warranty; and, if binding, it is as part of the contract itself; and if the contract be within the statute of frauds, and the note in writing only specifies that the flour is to be "extra superfine," and does not notice an undertaking previously given by parole, that it shall be equal to a certain sample, or to certain specific flour already sold, an action will not lie for delivering inferior to such sample, if it be "extra superfine," either on the ground of warranty or false representation; and even assuming that an action would lie to recover the price on the ground that it was paid under a mistake of fact, in supposing the flour delivered was according to the contract, when it was not, such an action will not lie where the buyer has retained and used or sold a larger portion of the flour than was necessary for the purpose of trial to ascertain if it were according to the contract. *Harnor* vs. *Groves*, 3 Com. L. Rep. 406; 24 L. J. 53. (C. B.)

Devise—Lapse.—Testator gave his residuary real and personal estate to his wife, her executors, administrators, and assigns, but if she should die intestate, then over. The wife having died in the testator's lifetime, the gift over held to have lapsed, and not to have taken effect. *Hughes* vs. *Ellis*, 24 L. J. Ch. 391, Master of the Rolls.

Easement—Right of Way.—A right of way of necessity can only arise by grant express or implied, and therefore, not in the case of an escheat. *Proctor* vs. *Hodgson*, 24 L. J., Ex. 195.

Ecclesiastical Law — Divorce—Cruelty — What amounts to a revival after condonation.—Cruelty fully condoned is not revived by subsequent desertion. In order to revive condoned cruelty, the acts must be *ejusdem generis*. *Hart* vs. *Hart*, 2 Eccl. & Adm. Rep. 193. (Prerog.)

Equity—Constructive Notice.—Constructive notice is a doctrine not to be extended. When a purchaser is sought to be affected with Constructive Notice, the question is not whether by cautious prudence, he might not have acquired knowledge, but whether his not obtaining it was an act of gross and culpable negligence. *Ware* vs. *Egmont*, 24 L. J., Ch. 361, Lord Chancellor.

Evidence—Secondary Proof.—Semble, that secondary evidence is admissible of the contents of a private document in the possession of a party who is beyond the jurisdiction of the Court, and who refuses to produce it. But the mere demand of the document made by a stranger, who does not disclose his object in making it, is insufficient to render the evidence admissible. *Boyle* vs. *Wiseman*, 24 L. J., Ex. 160.

Insurance — Money advanced on freight — Average contribution.—A custom that an insurer of money advanced on account of freight is not liable to a general average loss or contribution, is in derogation of the written contract, and cannot be set up in bar of an action on the policy. *Hall* vs. *Janson*, 24 L. J. 97. (Q. B.)

Landlord and tenant—Right of outgoing tenant to manure and fixtures. An outgoing tenant cannot recover the value of manure which he is bound to leave on the farm, nor the value of fixtures which were not severed by him during his occupation. *Tyler* vs. *Hook*, 19 J. P. 326. (C. B.)

Landlord and tenant—Surrender by operation of law.—Where a landlord has agreed to accept another person as his tenant, to whom a lease is to be granted, and the outgoing tenant remains in possession, there is no surrender by operation of law until a lease has been executed and the lessee admitted into possession. *Ibid.*

Life Insurance—Suicide.—Declaration by executors, on a life policy containing conditions: First, that polices effected by persons in their own

lives, who should die by their own hands, would become void, so far as regarded the executors or administrators of the person so dying, but would remain in full to the extent of any *bona fide* interest which might have been acquired by any other person under an actual assignment by deed for a valuable consideration in money, or by way of security or indemnity, or by virtue of any legal or equitable lien as security for money, upon proof being given to the directors to their satisfaction; and secondly, if a person, who should have been insured on his own life for at least five years, or should have paid a sum equivalent to at least five years premiums, should die by his own hands, the directors should be at liberty, if they thought proper to do so, but not otherwise, to pay for the benefit of the family, or plea that the insured died by his own hand. Replications—first, that before the death of the insured, K. acquired a *bona fide* interest in the policy by actual assignment by way of security for money within the meaning of the conditions, and proof of the extent of such interest was before action given to the directors to their satisfaction; and secondly, before the death A. K. acquired a *bona fide* interest in the policy by virtue of an equitable lien as a security for money, and proof of the extent of such interest was before action given to the directors to their satisfaction: *Held*, on demurrer to the first replication, that it was bad for not shewing that the alleged assignment was by deed. *Held*, also, that the second replication was proved by evidence that the deceased had, before marriage, given a bond conditional to secure £5000 to his intended wife, and that subsequently not being able to do so, an agreement was made succoring different members of his family, by which the insured was to insure his life for the benefit of his wife, and she was to keep up the premiums out of her private income; and that in pursuance of such agreement, he did insure, and handed over the policy to K., as trustee for the wife, intending to assign regularly, but that he did not so assign, but died by his own hands, which facts were made, however, to the directors. *Held*, further, that such evidence was sufficient to shew the policy was in the hands of K. an equitable lien, and that the directors ought to be satisfied, it not being necessary to show that they were in fact satisfied. *Held*, finally, that the policy was not bad in law as tending to encourage suicide. *Moore* vs. *Woolsey*, 19 Jurist, 468, Queen's Bench.

Master and servant—Grounds of dismissal.—The declaration stated that the plaintiff entered into the service of the defendant for a term of three years, under an agreement that he, the plaintiff, would during that