LEGAL NOTES.

CONSTITUTIONAL LAW.—MONEY GRANTED BY THE STATE TO A TOWN CANNOT BE TAKEN AWAY BY SUBSEQUENT LEGISLATION.—*Spaulding* v. *Town of Andover*, in the Supreme Judicial Court of New Hampshire. (March 1874.)

At various times during the war, the legislature of New Hampshire passed acts authorizing the several towns to raise money for the payment of bounties, to those enlisting to fill their quotas. In this way, the town of Andover, with other towns, incurred a large debt.

In 1870 and 1871, the legislature provided, that from $2,000,000 to $3,000,000, in state bonds, should be granted to such towns, as a "reimbursement" for such war debts, and "in part payment" thereof, and a board of commissioners duly appointed for that purpose, fixed the amount due each town, and the assignment of the same, was duly made by them, and entered by the state treasurer upon his books, before July 3d 1872, and was duly reported by him, as a liability of the state, but neither the specific bonds, nor the money in lieu of them, had actually been taken by the town from the state treasury, before the commencement of this and other suits.

$100 was so assigned to Andover on account of the plaintiff, who had enlisted early in the war, before towns paid bounties, afterwards re-enlisted, was counted upon the quota of the town, deserted while on his re enlistment furlough, never returned, was never restored, and received no bounty from the town.

The Act of July 3d 1872, provided that if, "any town or city has received, or shall receive the sum of one hundred dollars or part thereof, either in money or bonds, for any person counted as part of the quota of such town or city, who has not received any bounty from such town, city or place, the sum of money or bonds received, shall belong to and be the property of the person so counted, or his legal representatives, and may be recovered of such town or city, in an action of *assumpsit*, as for money had and received." Plaintiff brought his action under this Act. At the October term 1873, Chief Justice SARGENT directed a verdict for the defendants, and the case was reserved.

The court unanimously held:—

1. A fund granted to a municipal body, by the legislature of a state, cannot be taken away, or diverted to other purposes, by subsequent legislation.

2. Such diversion is prohibited, by that clause of the Federal Constitution, which provides, that "no state" shall pass any "law impairing the obligation of contracts."

3. The *dicta* in *Darlington* v. *The Mayor, &c.*, 31 N. Y. 164, were disapproved.

4. That the Act of 1870 was an unqualified and unencumbered grant of the money to the town, and possessed all the incidents of an executed and irrevocable contract. The Act of 1872 was an attempt to give the money thus granted to other parties, and was therefore void as impairing the obligation of a contract.

MANDAMUS AGAINST A GOVERNOR.—PUBLIC OFFICER.—REWARD FOR PERFORMANCE OF DUTY.—SPECIAL DEPUTY.—*Malpras* v. *Caldwell.*

in the Supreme Court of North Carolina (January Term 1874), was a *mandamus* against the Governor of the state to compel payment to the plaintiff of the amount of a reward that had been offered for the apprehension of a fugitive from justice. After the reward had been offered, plaintiff went to the sheriff, who had a warrant for the arrest of the fugitive, procured an appointment as a special deputy, was handed the warrant, and thereupon made the arrest. The court held that *mandamus* would lie against the Governor (*Cotton* v. *Ellis*, 7 Jones 545). but that the plaintiff by becoming a deputy sheriff had disabled himself from claiming the reward. PEARSON, C. J., delivering the opinion says, "Our conclusion is that as plaintiff by undertaking to act for and in the name of the sheriff relieved him from his official liability" (for not apprehending the fugitive who appeared to have been lurking in the county), "this legal consequence fixes a character upon the transaction which cannot be changed, and the plaintiff is by reason thereof concluded from answering that in truth he was not acting as the deputy of the sheriff."

DEDICATION TO PUBLIC USE.—SELLING LAND BY REFERENCE TO MAP.—NOTICE TO SUBSEQUENT PURCHASER.—*Carter et al.* v. *City of Portland*, in the Supreme Court of Oregon, was a bill to quiet title and for an injunction against trespass. Complainants alleging title in fee to certain lots in the city of Portland, put fences thereon, which the city authorities took down. The answer of the city alleged that the said lots were in 1850 the property of one Coffin, who caused two maps to be made, which were copies of the original plan of the city as laid out by the proprietors; that upon said maps these lots were marked as public parks; that Coffin made frequent sales of land in said city by reference to said maps; that the city adopted said map in 1852, and Coffin ratified it after that date; that subsequently Coffin obtained a patent from the general government for land previously taken up by him, including these lots; that on December 4th 1867, said Coffin, combining and confederating with the plaintiffs, fraudulently made and published a map or plat designated as "Coffin's Addition to the City of Portland," on which the parcels of land in controversy were numbered as blocks usually are upon town plats; that on all prior maps the said parcels of land remained unnumbered and were designated as public parks; that said pretended map was executed by said Coffin before the plaintiff Mason, who signed his name thereto as a witness, and who, being a Notary Public, took the acknowledgment of Coffin and wife thereto; that the said map was recorded in the record book of deeds of Multnomah county, Oregon; that on December 28th 1867, the plaintiffs, having a full knowledge of all the facts alleged in the answer in relation to the dedication, obtained from Coffin and wife a deed purporting to convey to them the parcels of land in controversy.

The complainants in their reply denied most of the material allegations of the answer, and alleged that the map of Coffin's Addition was the only map of said property that is of record or of which they had notice. The court, MCARTHUR, J., delivering the opinion, held, 1. A dedication to public use may be by parol as well as by deed, but to constitute a dedication by parol there must be some act or acts proved, evincing a clear intention to devote the premises to the public use.

2. If one owning lands or having an equitable interest therein (sub-

sequently acquiring the title thereto), lays out a town thereon, and makes and exhibits a map or plan thereof with spaces marked streets, alleys, public squares, parks, etc., and sells lots with clear reference to said map or plan (though unrecorded), the purchasers of lots in said town acquire, as appurtenant thereto, every easement, privilege and advantage which the map or plan represents as part of the town.

3. Upon the sale of lots with such reference to the map or plan, the dedication of the spaces marked streets, alleys, public squares, parks, etc, becomes irrevocable. Formal acceptance by the corporate authorities is not necessary, and the dedication being irrevocable need not be followed by immediate and continued use.

4. Whatever is sufficient to direct the attention of a purchaser to the prior rights and equities of third persons, or of the public, and to enable him to ascertain their nature by inquiry, will operate as notice.

5. Notice should, with rare exceptions, be implied where one is shown to have such knowledge as would superinduce further inquiry in an honest, conscientious man.

FEDERAL AND STATE JURISDICTION.—TREATIES WITH INDIANS CONCERNING LANDS WITHIN THE JURISDICTION OF A STATE.—*U. S. v. 43 Galls. Whiskey, Lariviere et al., Claimants*, U. S. District Court, Dist. of Minnesota (May Term 1874).—This was a libel for the forfeiture of certain goods as having been introduced into Polk county, Minn. in violation of U. S. Statutes. Minnesota was admitted as a state in May 1858. In 1863 a treaty was made by the U. S. with the Chippewa Indians, by which that tribe ceded their rights to certain lands, among which was the territory included in Polk county. The 7th article of the treaty is as follows: "The laws of the United States now in force, or that may hereafter be enacted, prohibiting the introduction and sale of spirituous liquors in the Indian country, shall be in full force and effect throughout the country hereby ceded, until otherwise directed by Congress or the President of the United States." By the Acts of Congress of 30th June 1834, sec. 20; 13th Feb. 1862 and 15th March 1864, sec. 1, liquors introduced into Indian country without a permit of the war department are subject to forfeiture. NELSON, J., held that by the admission of the state of Minnesota the entire control of the land and the Indians on it passed to the state, subject to the general powers of Congress over commerce with the Indians, &c., and no subsequent Act of Congress or treaty could abridge that control. The provision of sect. 7 of the treaty was therefore inoperative until the consent of the state was obtained, and the decree must be for claimants. See *U. S.* v. *Ware*, 1 Woolworth 1; *U. S.* v.. *Yellow Sun*, 1 Dillon 275; *Kansas Indians*, 5 Wall. 737.

MILITARY AND CIVIL LAW.—JURISDICTION OF CIVIL AUTHORITIES OVER SOLDIERS IN THE SERVICE OF THE UNITED STATES.—*Ex parte United States ex rel. Morrow*, in the Supreme Court of the Territory of Utah. In February 1874 Frederick Bright, a private soldier of the United States army, and stationed at Camp Douglas, came into Salt Lake City. He was arrested by the police whilst he was in the city, taken to the Police Court, tried upon a charge of violating a city ordinance against drunkenness, found guilty and sentenced to pay a fine of five dollars. In default of payment thereof, he was committed to prison

until said fine should be paid, time of imprisonment however not to exceed five days. Whilst so confined a writ of *habeas corpus* was sued out by Colonel H. A. Morrow, commander of Camp Douglas, for his release. On hearing, McKEAN, C. J., ordered Bright to be discharged, and on appeal to the Supreme Court the order was affirmed. McKEAN, C. J., delivering the opinion said, the law governing the case was to be found in the 33d Article of War, which provides that "when any officer or soldier shall be accused of a capital crime, or of having used violence or committed an offence against the person or property of any citizen of any of the United States, such as is punishable by the known laws of the land, the commanding officer and officers of every regiment, troop, or company to which the person or persons so accused shall belong, are hereby required, upon application duly made by or in behalf of the party or parties injured, to use their utmost endeavors to deliver over such accused person or persons to the civil magistrate, and likewise to be aiding and assisting to the officers of justice in apprehending and securing the person or persons so accused, in order to bring him or them to trial." The conclusions of the court were therefore,

1st. That a soldier of the national army can be demanded by and surrendered to the civil authorities, to be tried and punished by them, only when he is charged with an offence, in time of peace, "such as is punishable by the known laws of the land," that is, by the laws of the United States, or of a state or territory.

2d. That a city by-law or ordinance is not in this sense a law of the land; but that a soldier who, when off duty, violates the ordinance of Salt Lake City forbidding drunkenness and disorderly conduct, may in the absence of a provost guard, be arrested in the act and restrained by the civil authorities, but may not be tried and punished by them.

3d. That in case of such arrest and restraint, it is the duty of the civil authorities to deliver over such soldier to the military authorities, on the demand of the latter; and the duty of the military authorities to enforce against him the law military forbidding such offence.

4th. That if the civil authorities, after arresting such offender, refuse to deliver him over on such demand, or proceed to try and punish him, the military authorities may take him by force.

5th. That if, instead of resorting to force, the military authorities present a petition to a Federal court or judge of the territory, the prisoner must be discharged from the custody of the civil authorities by the writ of *habeas corpus*.

In the same matter, under date of May 1st 1874, Judge Advocate General HOLT advised the Secretary of War to the same effect, and his opinion was approved in an order by the Secretary

CHICAGO BAR ASSOCIATION.—From the report for 1874 of this Association we learn that it was founded last year and is already in successful operation. The following extract from the address of the Executive Committee will commend the Association to all honorable men.

"It is made the duty of the Committee on Grievances to report to the Association, all unprofessional conduct by any member of the Bar in the City of Chicago. The Association intends to discipline its own members, when necessary, and to prosecute all parties guilty of misconduct, before the Supreme Court, and have them disbarred. This is an impor-

tant duty which the profession owes to itself, and which if performed, will lead to the happiest results. There is no one, whose duty it has heretofore been, to prosecute such offenders, and no individual felt himself strong enough, out of simple duty to the profession, to undertake such a task. With an organized Association behind the committee, whose collective duty it is to take charge of such matters, it will be easy to rid the profession of such characters."

The President for 1874 is Wm. C. Goudy; Vice Presidents, Lyman Trumbull and Thomas Hoyne.

CHURCH PROPERTY —JURISDICTION OF CIVIL COURTS OVER DISPUTES BETWEEN PORTIONS OF CHURCH CONGREGATIONS.—CHRISTIANITY AS A CONSTITUTIONAL REQUIREMENT.—*Hale et al.* v. *Everett et al.*, decided by the Supreme Judicial Court of New Hampshire so long ago as 1868, but not yet reported, was a bill in equity to enjoin the pastor and wardens of a Unitarian Church from preaching in or intermeddling with the property of the congregation, on the ground that they had departed from the Unitarian Christian faith. The court held,

1. That the constitution of the state favors the Protestant religion, and requires that the Governor, Councillors, Senators and Representatives shall be of the Protestant religion as a positive and affirmative test, and not merely that they shall not be Roman Catholics.

2. That apart from the right to hold certain offices, the Catholic and all other religions are secured in the same liberties and rights as the Protestant Christian.

3 The political or conventional use of the word Christian, denoting one who assents to the truth of the doctrines of the religion of Christ, or who, being born of Christian parents or in a Christian country, does not profess any other religion or belong to any of the other religious divisions of men, is the sense in which the word is ordinarily used in constitutions and statutes and legal documents, and referring to those commonly known as nominally Christian, rather than to those who, professing the faith of some particular church, are termed Christians, in the theological or sacred sense of the term.

4. But when the children of Protestant parents, or those born in a Protestant country, renounce that religion, and voluntarily elect and adopt and profess some other religion, they cannot any longer be reckoned or assumed to be of the Protestant religion; and so of all the denominations of Christians, and all other systems of religion.

5. Where a conveyance is made to, or a trust created for the benefit or use of a religious society, by its denominational name, with no other particular designation in the deed of the tenets or doctrines which it is to be used to advance and support, the denominational name may be a sufficient guide as to the nature of the trust, so far as respects doctrines which are admitted to be fundamental.

6. In such case, those having control of property held in trust for the benefit of such religious society may be restrained from applying the property, or the use of it, to the promotion of religious tenets and doctrines clearly opposed and adverse to the fundamental doctrines and faith of such sect or denomination, at the time, and immediately after, such trust was created.

7. In case of a division of a religious society or corporation, where both parties still adhere to the tenets, doctrines, and discipline of the