DIGEST OF IMPORTANT DECISIONS.

EDITED BY

ALFRED ROLAND HAIG.

CONSTITUTIONAL LAW.

Cases selected by WILLIAM STRUTHERS ELLIS.

ELECTIONS.

1. *Registration of Voters—State Statute.*

Statutes 1892, Chap. 351, § 22, of Massachusetts, provides that certain persons, before registering for election purposes, "must read from the official edition of the Constitution at least three lines, other than the title, in such manner as to show that he is neither prompted nor reciting from memory," and that he shall also "write his name in the register." *Held*, that such provision is not in violation of the Fourteenth Amendment of the Constitution of the United States. The right to vote is not one of the privileges and immunities of United States citizenship within the meaning of the Fourteenth Amendment: Stone *v.* Smith, Supreme Judicial Court of Massachusetts, FIELD, C. J., June 22, 1893, 34 N. E. Rep., 521.

INVOLUNTARY SERVITUDE.

2. *Vagrants.*

Revised Statutes § 8849, of Missouri, which authorizes the hiring of a "vagrant" for six months to the highest bidder, contravenes both the State Constitution and § 1 of the Thirteenth Amendment of the Federal Constitution, which declare against "slavery" or involuntary servitude except in punishment of crime whereof the party shall have been duly convicted: Thompson *v.* Bunton, Supreme Court of Missouri, SHERWOOD, J., June 19, 1893, 22 S. W. Rep., 863.

MECHANICS' LIENS.

3. *Legislation Necessary.*

Article 20, § 15, of the Constitution of California provides that mechanics, material men, etc., shall have a lien upon the property upon which they have bestowed labor or furnished material, etc., and that the legislature shall provide by law for the speedy and efficient enforcement of such liens. *Held*, that the provision is not self-executing, but requires legislation to give a lien: Spinney *v.* Griffith, Supreme Court of California, SEARLES, C. J., April 18, 1893, 32 Pac. Rep., 974.

STREET RAILWAYS.

4. *Title of Statute—Trolley System—Charter—Substitution of Electric Motive Power for Horse or Steam Power.*

The Act of March 4, 1870 (P. L. 1870, p. 529), of New Jersey conferring upon a certain "Horse and Steam Railroad Company" authority to construct and operate a railroad in certain streets of a city, which had

for its object the conferring of privileges additional to those granted by the original charter, is not unconstitutional because its object is not expressed in its title, which title merely refers to the company by its name. "It was no more necessary to refer in the title to all the powers to be given by the supplement than it was to set out in detail every franchise granted to the corporation by its charter:" Paterson Railway Co. *v.* Grundy, Court of Chancery of New Jersey, GREEN, V. C., April 28, 1893, 26 Atl. Rep., 788.

See MUNICIPAL CORPORATIONS AND PUBLIC LAW, 6.

CORPORATIONS.

Cases selected by LEWIS LAWRENCE SMITH.

NATIONAL BANKS.

1. *Accommodation Indorsers—Ultra Vires.*

A national bank cannot loan its credit or become an accommodation indorser: National Bank of Commerce *v.* Atkinson, Circuit Court, District of Kansas, RINER, D. J., April 11, 1893, 55 Fed. Rep., 465.

2. *Powers of President—Execution of Note.*

The president of a national bank has no power inherent in his office to bind the bank by the execution of a note in its name; but power to do so may be conferred on him by the board of directors, either expressly, by resolution to that effect, by subsequent ratification, or by acquiescence in transactions of a similar nature, of which the directors have notice. *Ibid.*

POWERS.

3. *Capacity to hold Land—Inquiry Into.*

The capacity of a corporation to take a conveyance of land cannot, after the transfer has reached completion, be called in question in a collateral way, except by the State, and not by a private suitor: Connecticut Mut. Life Ins. Co. *v.* Smith, Supreme Court of Missouri, SHERWOOD, J., May 24, 1893, 22 S. W. Rep., 623.

QUO WARRANTO.

4. *Function of, as Against a Corporation.*

The object of a proceeding in *quo warranto* against a corporation is to determine by what right it exercises a certain franchise; a "franchise," as here understood, being, as defined by Kent, a particular privilege conferred by the grant of the government, and vested in individuals, or, as defined by Blackstone, a branch of the king's prerogative subsisting in the hands of a subject. Or it may be to oust it from the right to be a corporation for an abuse or nonuser of franchises granted. Hence it is that the State must always be the plaintiff, as it alone can complain of such usurpation of its authority, or abuse of privileges granted. It is not, then, a suit for the vindication of the proprietary rights of the individual, as against the claims of a corporation; the remedies of the individual against a corporation for the recovery of property being the same as against a natural person: State *ex rel* Waddell *v.* R. R. Co., Supreme Court of Ohio, MINSHALL, J., April 25, 1893, 33 N. E. Rep., 105.

STOCKHOLDERS.

5. *Right to Inspect Books.*

In Louisiana it was held that, while a stockholder has the right to inspect the books of the company at all reasonable times, he cannot recover damages against it because the secretary refuses him permission to make such inspection: Legendre *v.* Brewing Association, Supreme Court of Louisiana, April 24, 1893, BREAUX, J., 12 So. Rep., 827.

SUBSCRIPTIONS.

6. *Fraud.*

Where a subscription to stock of a corporation, and subsequent payment for the stock, are procured by fraudulent representations as to the purposes of the corporation and the amount of paid-up stock, the stockholder may recover back land and money with which he paid for the stock, notwithstanding the insolvency of the corporation; its creditors not being parties to an action for such relief: Ramsey *v.* Mfg. Co., Supreme Court of Missouri, Division 2, BURGESS, J., May 30, 1893, 22 S. W. Rep., 719.

EQUITY.

Cases selected by ROBERT P. BRADFORD.

CANCELLATION OF BONDS.

1. *Multiplicity of Suits.*

A bill in equity brought by a village corporation against sixty respondents, asking that they be perpetually enjoined from negotiating or delivering to any person certain bonds and coupons issued by said corporation and owned by the respondents, and praying that the same be cancelled, may be sustained upon the inherent jurisdiction of equity to interpose for the purpose of preventing a multiplicity of suits. It is in the nature of a bill of peace, the rights of all the parties involved depending upon the same question both of law and fact.

A court of equity will not order the cancellation of bonds unless it be shown that a necessity exists to prevent irreparable injury, which a court of equity alone can avert: Farmington Village Corp. *v.* Sandy River Nat. Bank, Supreme Judicial Court of Maine, FOSTER, J., August 13, 1893, 27 Atl. Rep., 965.

EQUITY JURISDICTION.

2. *Religious Associations—Powers of Supreme Judicatory—Title to Property.*

The constitution of a church of the associated class provided that no amendment should be made thereto except on request of two-thirds of the whole society, and that the confession of faith should not be amended. The general conference of such church decided that such provisions were "extraordinary and impracticable." *Held*, that the decision of the supreme judicatory of a religious denomination of this class is not conclusive upon the courts when it is in open and avowed defiance and in express violation of the constitution of such body: Watson *v.* Jones, 13 Wall., 679, distinguished.

Complainants alleged that they were duly elected trustees to hold certain church property, and that defendants were illegally elected by a seceding faction of the church, and were holding the property in perversion of the lawful trust. *Held*, that the remedy by injunction being peculiarly adapted to the necessities of the case, a demurrer for want of equitable jurisdiction must be overruled: Brundage *v.* Deardorf, U. S. Circuit Court, Northern District of Ohio, TAFT, J., May 12, 1893, 55 Fed. Rep., 839.

RESCISSION OF CONTRACT.

3. *Fraudulent Representations.*

In an action by the vendee to rescind a purchase of land on the ground of fraudulent representations by the vendor, where the findings show facts indicating that because of the fraud plaintiff has been injured to the extent of many thousands of dollars, they support judgment for plaintiff although no specific amount of damages is found.

In an action by the vendee to rescind the purchase of a vineyard where it appears that the plaintiff was prevented from making a critical examination of the premises by misrepresentations of defendant's employe, there is no presumption that plaintiff relied on his own judgment in making the purchase, instead of the representations of defendant: Wainscott *v.* Occidental Bldg. and Loan Ass'n, Supreme Court of California, SEARLS, C., May 12, 1893, 33 Pac. Rep., 88.

RESULTING TRUSTS.

4. *Payment by One, Title in Name of Another—Statute.*

Complainant and his mother purchased land through an agent, H. For convenience it was agreed that the title should be taken in the name of H, H to convey to the purchasers when they had agreed upon a scheme of division of the property, H agreeing to reconvey when requested: *Held*, under How. St., §5569, that the persons furnishing the money had no rights in the property as against H's creditors, and a sale under execution against H would not be enjoined; Putnam *v.* Tinkler, 83 Mich., 628, distinguished: Barnes *v.* Munroe, Supreme Court of Michigan, GRANT, J., June 1, 1893, 55 N. W. Rep., 431.

SPECIFIC PERFORMANCE.

5. *Personal Services—Mutuality.*

A verbal contract whereby plaintiff agrees to live with an old woman until her death, in consideration of her promise to leave all her property to plaintiff, is taken out of the Statute of Frauds by the rendition of the services during the lifetime of the woman, and, after her death (which here occurred within four months of the execution of the contract), equity will specifically enforce the contract on the theory of part performance, since the services were of a peculiar character, and not intended by the parties to be measured by a pecuniary standard: Brinton *v.* Van Cott, Supreme Court of Utah, MINER, J. (BLACKBURN, J., dissenting), April 15, 1893, 33 Pac. Rep., 218.

MUNICIPAL CORPORATIONS AND PUBLIC LAW.

Cases selected by MAYNE R. LONGSTRETH.

CHINESE EXCLUSION.

1. (*a*) *National Control of Immigration and Emigration.*

Every sovereign nation has the power, as inherent in sovereignty and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe; and the right of a nation to expel or deport foreigners who have not been naturalized or taken any steps toward becoming citizens of the country rests upon the same grounds, and is as absolute as the right to prohibit and prevent their entrance within its dominions.

(*b*) *Expulsion of Chinese.*

Chinese laborers residing in the United States, are entitled, like all other aliens, so long as they are permitted by the government to remain in the country, to all the safeguards of the Constitution and to the protection of the laws in regard to their rights of person and property and to their civil and criminal responsibility; but as they have taken no steps to become citizens and are incapable of becoming such under the naturalization laws, they remain subject to the power of Congress to order their expulsion or deportation whenever, in its judgment, such a measure is necessary or expedient for the public interest.

(*c*) *Geary Act—Constitutionality.*

The proceeding provided for in the Act of May 5, 1892, better known as the Geary Act, is in no proper sense a trial and sentence for crime, nor is the order of deportation a banishment in the technical sense, but the whole proceeding is merely a method of enforcing the return to his own country of an alien who fails to comply with the conditions prescribed for his continued residence here; and the provisions of the Constitution requiring due process of law, and trial by jury, and prohibiting unreasonable searches and seizures, and cruel and unusual punishments, have no application.

(*d*) *Geary Act—Evidence—Burden of Proof.*

The provision which puts the burden of proof upon a Chinese laborer arrested for having no certificate, as well as the requirement of proof by one credible white witness that he was a resident of the United States at the time of the passage of the act, is within the acknowledged power of every legislature to prescribe the evidence which shall be received, and the effect of that evidence in the courts of its own government: Fong Yue Ting *v.* United States, Supreme Court of the United States, GRAY, J: (FULLER, C. J., FIELD, J. and BREWER, J., dissenting), May. 15, 1893, 13 Sup. Ct. Rep., 1016; 149 U. S., 698.

LOCAL ASSESSMENTS.

2. *Liability of Public Property.*

While constitutional and statutory exemptions from taxation of property of the State, county and municipal corporations do not refer to or

include special assessments for local improvements, still as the government is not bound by a statute, the words of which tend to restrain or diminish any of its rights or interests, unless it be specifically mentioned therein, therefore statutes conferring power upon municipal corporations to levy special assessments are not to be interpreted to confer the power of levying such assessments upon the property of the State, counties or municipal corporations unless the intent of the legislature to render it liable clearly appears. It is not a question of exemption but of delegated authority. And especially will such authority not be presumed to have been delegated when the only remedy provided for enforcing the assessment is such that it could not be used against public property as a lien enforceable by sale: Kinzey *v.* Kinzey, Supreme Court of Missouri BRACE, J., May 8, 1893, 22 S. W. Rep., 498.

MUNICIPAL SECURITIES.

3. *Estoppel by Recitals.*

Municipal corporations are estopped, as against *bona fide* holders of municipal bonds, from setting up as a defense to an action thereon that all the preliminary steps necessary to authorize the issue of bonds were not taken, when the officers who had charge of the issue of such bonds are especially or impliedly authorized to determine whether all the conditions precedent to the issue of valid bonds have been complied with, and recite in the bonds so issued that they have been complied with. It is not necessary to estop the corporation that this statement should set forth in detail that all the preliminary steps have been taken. It is sufficient that it declare that the bonds are issued in pursuance of a certain statute, specifying it. Neither is it essential that the officers issuing the bonds should be expressly authorized to determine such questions. It is sufficient if they are given full control in the matter: Coler *v.* Dwight, School Township, Supreme Court of North Dakota, CORLISS, J., April 25, 1893, 55 N. W. Rep., 587.

PUBLIC OFFICERS.

4. (*a*) *Impeachment—Impeachable Offence.*

Where, in an impeachment proceeding, the act of official delinquency consists in the violation of some positive provision of the Constitution or statute which is denounced as a crime or misdemeanor, or where it is a mere neglect of duty wilfully done, with a corrupt intention, or where the negligence is so great and the disregard of duty so flagrant as to warrant the inference that it was wilful and corrupt, it is a misdemeanor in office within the constitutional provision that "all civil officers . . . shall be liable to impeachment for any misdemeanor in office." But where such act results from a mere error of judgment, or omission of duty without the element of fraud, or where the alleged negligence is attributable to a misconception of duty, rather than a wilful disregard thereof, it is not impeachable, although it may be highly prejudicial to the interests of the State.

(*b*) *Impeachment—Degree of Proof.*

Impeachment is, with respect to production of evidence and quantum of proof required to warrant a conviction, essentially a criminal

prosecution; hence the guilt of the accused must be established beyond a reasonable doubt: State *v.* Hastings, Supreme Court of Nebraska, POST, J. (MAXWELL, C. J., dissenting), June 5, 1893, 55 N. W. Rep., 774.

5. *Impeachment—After Term of Office.*

The power of impeachment conferred by the constitution upon the legislature extends only to civil officers of the State, and this power can not be exercised after the person has gone out of office. Private citizens are nót amenable to impeachment: State *v.* Hill, Supreme Court of Nebraska, NORVAL, J., June 5, 1893, 55 N. W. Rep., 794.

STREET RAILWAYS.

6. *Electric Motive Power—Construction of Charter—Substitution of Electric Motive Power for Horse or Steam Power.*

Where the charter of a "horse and steam railway company," granted in 1866, authorized the company "to use on its roads cars to be operated by such motive power as they may deem expedient and proper," such authority is not limited to the methods known or in practical use at the time of the grant, but embraces all improvements which science and ingenuity may devise, including the electric trolley system. But if a later act requires that no electric wire shall be constructed above the surface of city streets until the Board of Commissioners of Electric Subways shall authorize the same, this will operate as a new limitation upon the previous concession of authority, and a street railway company which has placed an overhead wire along a street without the consent of said board is not entitled to an injunction restraining people from cutting said wire: Paterson Railway Co. *v.* Grundy, Court of Chancery of New Jersey, GREEN, V. C., April 28, 1893, 26 Atl. Rep., 788.

7. *Occupancy of Streets—Rights of Abutting Owners.*

Purchasers of lots abutting on a plotted street acquire the easements of access, light and air; and they are entitled to have the street forever kept open, though the fee may be in the town as trustee for the public, instead of the abutting owners for street uses. Municipal corporations, when empowered by the legislature to do so, may devote a reasonable portion of the street to the use of a street railway, without making compensation to abutting owners, since such is a proper use of the street. But the easement of abutting owners on a street are property rights; and whether the fee of the streets is in such owners, or in the city in trust for street uses, the legislature cannot devote the entire width of the street to railroad purposes, unless compensation is first made to the owner for the taking of his easements, though there may be no special constitutional restriction by the legislature: Dooly Block *v.* Salt Lake Rapid Transit Co., Supreme Court of Utah, BARTCH, J., June 5, 1893, 33 Pac. Rep., 230.

PLEADING AND PRACTICE.

Cases selected by ARDEMUS STEWART.

PLEADING.

EJECTMENT.

In ejectment, defendant may withdraw a plea of not guilty, and file a demurrer to the complaint.

In ejectment, pleas of not guilty and disclaimer are incompatible, and cannot be pleaded together: Burebaum *v.* McCarley, Supreme Court of Alabama, COLEMAN, J., April 26, 1893, 12 So. Rep., 5.

PRACTICE.

ABATEMENT OF ACTION.

1. *Death of Plaintiff in Suit for Dower.*

Plaintiff sued to recover dower, and obtained judgment. Defendants asked for leave to pay, in lieu of dower, a gross sum, which plaintiff had signified her willingness to accept. The Court thereupon ordered a reference to ascertain such sum, and afterward rendered a decision in writing confirming the report, and giving plaintiff a specified sum. Before a formal order embodying such decision was prepared and signed, plaintiff died. *Held*, that the action did not abate, but might be continued by plaintiff's executor: Robinson *v.* Govers, Court of Appeals of New York, O'BRIEN, J. (ANDREWS, C. J., dissenting), June 6, 1893, 34 N. E. Rep., 209.

JUDGE.

2. *Disqualification.*

A county judge is disqualified from trying a case by the fact that, before his election to the office, he had been appointed receiver for one of the parties: Franco-Texan Land Co. *v.* Howe, Court of Civil Appeals of Texas, HEAD, J., May 3, 1893, 22 S. W. Rep., 766.

JUDGMENT.

3. *Entry After Expiration of Judge's Term of Office.*

A judgment does not become effective until filed with the clerk, and is of no effect if filed after the expiration of the judge's term, no matter when prepared and signed: Broder *v.* Conklin, Supreme Court of California, HARRISON. J., May 27, 1893, 33 Pac. Rep., 211.

JUSTICE OF THE PEACE.

4. *Disqualification.*

A land agent who is in partnership with an attorney under an agreement to pool their earnings, and divide them equally, is disqualified from acting as justice of the peace in an action wherein his partner is attorney for one of the parties.

A justice of the peace is disqualified from rendering judgment in garnishment proceedings by the fact that, before his appointment to the office, he had become a surety for plaintiff on the garnishment bond: Franco-Texan Land Co. *v.* Howe, *supra.*

MANDAMUS.

5. *Street Railways—Duties to Public.*

The performance of the duties which a street railway company owes to the public to operate its lines in accordance with the provisions of a city ordinance under which its road was constructed, may be enforced by mandamus: City of Potwin Place *v.* Topeka Ry. Co., Supreme Court of Kansas, ALLEN, J., June 10, 1893, 33 Pac. Rep., 309.

RES JUDICATA.

6. *Title to Land—Lien.*

A decree in an action against plaintiff setting aside a deed of land by defendant's grantor to him, and quieting her title thereto, is a bar to subsequent action by him to have declared and enforced a lien on such land for taxes paid out by him, and for improvements made theron: Morarity *v.* Calloway, Supreme Court of Indiana, COFFEY, C. J., May 17, 1893, 34 N. E. Rep., 226.

VERDICT.

7. *Average Verdict—Proof—Affidavits of Jurors.*

Where a jury agree that each member thereof shall write out the sum which he thinks plaintiff is entitled to recover, and then divide the aggregate of such sums by twelve, and that the quotient shall be the amount of their verdict, such verdict is obtained "by a resort to the determination of chance," within the meaning of Code Civil Proc. § 657, providing that for the purpose of obtaining a new trial such misconduct of the jury may be shown by the affidavits of the jurors: Dixon *v.* Plums, Supreme Court of California, GAROUTTE, J., May 31, 1893, 33 Pac. Rep., 268. See Flood *v.* McClure, 32 AMERICAN LAW REGISTER AND REVIEW, 515.

8. *Motion to Amend Verdict—Where Made.*

An application to amend a postea should be made to the trial judge, and the court in banc should not entertain such a motion, unless the matter is referred to the court by the judge: Peters *v.* Fogarty, Supreme Court of New Jersey, DIXON, J., June 8, 1893, 26 Atl. Rep., 855.

PROPERTY.

Cases selected by WILLIAM A. DAVIS.

CONSEQUENTIAL DAMAGES TO LAND.

1. *Escaping Oil—Nuisance—Distinction Between Damages Caused by Natural Development and Otherwise.*

The owner of land has the right to develop the same by digging for coal, iron, gas, oil, or other minerals, and if in the progress of such development, without fault or negligence on his part, an injury occurs to the owner of adjoining land, no action for such injury can be maintained. Where, however, the injury is caused by the prosecution of a business which has no necessary relation to the land itself, and is not essential to its development, an action will lie.

The escape of oil of a pipe-line company, not clothed with the right of eminent domain, and its percolation through plaintiff's land and destruction of his springs, constitute a nuisance, and the company is liable for consequential damages, regardless of negligence in permitting the oil to escape: Hauck *v.* Tide Water Pipe-Line Company, Limited, Supreme Court of Pennsylvania, PAXSON, C. J., February 27, 1893, 26 Atl. Rep., 644; 32 W. N. C., 45; 153 Pa., 366.

DEED.

2. *Covenant—Condition Subsequent—Forfeiture for Breach—Police Power—Cemetery.*

A provision in a deed, for land within a city to be used as a cemetery, that "the grantee, his successors and assigns, shall at all times maintain a good and sufficient fence around the premises," should be construed as a covenant, and not as creating a condition subsequent, where it is evident that the grantor, who owned lands on both sides, sought to impose a duty on the grantee to build all the fence inclosing the cemetery.

Where land has been used for a cemetery until it has become a public nuisance, and the State, by legislative act, forbids further interment therein, the condition of the deed, if it were such, is destroyed, and title vests absolutely in the grantee, though the act further provides that the city may have the bodies and monuments removed, and may purchase the land for a public park.

Forbidding the use of such land as a cemetery is not a taking of the grantor's property for public use within the Constitution, but is a valid exercise of the police power vested in the State: Scovill *v.* McMahon, Supreme Court of Errors of Connecticut, HALL, J., November 21, 1892, 26 Atl. Rep., 479.

MORTGAGE.

3. *Foreclosure of Purchase Money Mortgage—Specific Performance of Sale—Vendor's Lien—Waiver of—Dower.*

Purchasers at a foreclosure sale who are not parties to the suit become parties by signing the bid, and are liable to be proceeded against by petition for the specific performance of their contract.

In New Jersey a purchaser at a judicial sale is bound to take such title as an examination of the proceedings will show that he will get.

A mortgage given by a husband to secure unpaid purchase money due the vendor upon conveyance of the land mortgaged will have precedence over the inchoate dower of the wife, though executed and delivered some time after the execution and delivery of the conveyance, unless the vendor has in the meantime done some act which amounts to a waiver of his equitable lien for the purchase money.

When a wife of the owner of land fails to join in the execution of a mortgage, but afterwards joins her husband in a conveyance of the land to a third person, and the mortgage is foreclosed against such third person without making the wife of the said mortgagor a party, the purchaser under foreclosure will take the land free from the inchoate dower of the wife of the mortgagor: Boorum *v.* Tucker, Court of Chancery of New Jersey, PITNEY, V. C., March 29, 1893, 26 Atl. Rep., 456.

4. *Priority—Vendor's Lien.*

The mortgage of one who, without notice of a prior mortgage, advances money to remove a vendor's lien from the mortgaged premises, is superior to such prior mortgage to the amount that the money so

advanced was actually applied to the extinguishment of such lien: Price *v.* Davis, Court of Appeals of Kentucky, PRYOR, J., April 29, 1893, 22 S. W. Rep., 316.

RECORDING.

5. *Deeds and Mortgages—Priority.*

The Pennsylvania Act of March 18, 1775, provides that every deed and conveyance which shall not be recorded within six months after the execution shall be void against any subsequent purchaser or mortgagee unless recorded before the recording of the deed under which such subsequent purchaser or mortgagee shall claim. *Held*, that a mortgage actually recorded before a deed of the same premises is recorded has priority over the deed, though the deed was recorded within six months of its execution, and the mortgage was not; the six months' privilege of delay being merely to protect the holders of unrecorded deeds against subsequent conveyances of the same premises by the same grantors: Fries *v.* Null, Supreme Court of Pennsylvania, GREEN, J. (WILLIAMS and MITCHELL, JJ., dissenting), May 1, 1893, 26 Atl. Rep., 554; 32 W. N. C., 236; 154 Pa., 573.

TORTS.

Cases selected by ALEXANDER DURBIN LAUER.

DECEIT.

1. *Representations as to Future Events.*

A complaint in an action for damages, alleging that defendant, in order to induce plaintiff to lease from him certain premises, fraudulently concealed the fact that a certain building thereon did not belong to him, but which fails to allege that defendant knew, or had reason to know, that plaintiff was ignorant of the fact that defendant did not own such building, and that the leasing of the premises by plaintiff was actually induced by such concealment, is demurrable for failure to state a cause of action.

A representation by defendant that plaintiff could have possession of such building on a certain date, several months after the making of such representation, is not actionable, though such event did not occur, in that it relates to a future, and not to a past or present event: Sheldon *v.* Davidson, Supreme Court of Wisconsin, ORTON, J., May 2, 1893, 55 N. W. Rep., 161.

LIBEL.

2. *Charging a Constable with Improper Solicitation in Obtaining Fees.*

There is no error in overruling a demurrer to a declaration which, in effect, alleged the wilful and malicious publication of an article charging, in substance, that the plaintiff, who was a constable, solicited business for the magistrates' courts by attending the daily sessions of the recorder's court, and inducing persons tried therein to sue out unneces-

sary warrants against other persons; the declaration further alleging that by such publication it was intended to charge that the plaintiff did the acts mentioned for the evil and corrupt motive of increasing his fees as a constable. Whether or not there was probable cause for the belief on the part of the defendant that the information received by it was entirely reliable and trustworthy, and whether it acted in good faith in the publication without malice, were questions of fact for the jury: Augusta Evening News *v.* Radford, Supreme Court of Georgia, LUMPKIN, J., April 10, 1893, 17 S. E. Rep., 612.

So in Bourreseau *v.* Evening Journal Co.; 63 Mich., 425, it was held not privileged to publish that a deputy sheriff, solely with a view to increase his fees, hung around the highways and arrested men whose only offence was that they were poor and ragged.

MALICIOUS PROSECUTION.

3. *Probable Cause.*

O. charged J. before a justice of the peace with the commission of a criminal offence. The jury found J. not guilty, and made a special finding in these words, "and that the complaint was made without probable cause." J. then sued O. for damages, alleging that the prosecution was malicious and without probable cause, and set out in his petition the special finding of the jury. *Held*, that it was error to overrule O.'s motion to strike such special finding out of the petition: Obernalte *v.* Johnson, Supreme Court of Nebraska, RAGAN, J., April 26, 1893, 55 N. W. Rep., 220.

SLANDER.

4. *Actionable Words—Unchastity.*

Words spoken of a woman, "that she was in the habit of entertaining gentlemen callers at all hours of the night," do not necessarily impute unchastity: Hemmens *v.* Nelson, Court of Appeals of New York, O'BRIEN, J., (PECKHAM and MAYNARD, JJ.), dissenting, June 13, 1893, 34 N. E. Rep., 342. See Collins *v.* Dispatch Publishing Co., *ante*, p. 801.