



minute before 12 o'clock Saturday night to one minute after, was an adjournment "to the ensuing week." But no such word-catching is necessary. The legislature intended no change in the fundamental principles of jury trial, as is manifest from another Act on the same subject passed at the same session, which, in all fairness, should be construed *in pari materia* with the aforementioned Act of 1818.

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The 8th section of the Act of 1818, concerning the City Court of Charleston, which was intended by the same means to remedy the same mischiefs as the other Act, is in these words: "Petit jurors shall be drawn to serve one week, unless they be actually charged with an issue, in which case they shall be adjourned from time to time, or continue to sit until such issue shall be disposed of." Here, more plainly than in the other Act, appears the distinction between those stages of a case which are previous to the retirement of the jury, at all of which the jury may be adjourned, and the private consultation of the jury, which must be continuous until it has resulted in a verdict. Here, too, the words "actually charged with an issue," are equivalent to the words "empanelled and charged with the trial of any issue, civil or criminal," which are used in the other Act. Either phrase comprehends the whole of a jury's engagement with a cause, and to confine either so as to embrace only a jury to whom the charge on final instructions from the bench has been addressed, would pervert the proper meaning of words, and exclude from the remedy of the Acts cases interrupted by the expiration of the jury's term in the progress of the testimony or of the argument, in which cases the mischiefs are just as apparent as in the cases that would be included, where the summing up has taken place.

Another Act
of 1818.
7 Stat. 320.

The adjournment of a jury in the city, where all the jurors could certainly go home on Sunday, would be more convenient than in a country district; but considerations above mere convenience forbade the adjournment at any place, of a jury, after retirement and before agreement. Since 1818, various cases have occurred in the District Court of Charleston, in which the jury being out at 12 o'clock Saturday night, have been continued in confinement; but no example has yet been given of adjourning their unfinished consultation to another day.

It has been supposed that the Acts of 1818 must be construed subject to the common law maxim, *dies dominicus non est dies juridicus*. If I have succeeded in conveying my impressions upon some of the other heads which have been discussed, it must appear that, as to the origin of its authority here, its extent, and the consequences of its violation, that maxim, in reference to the sitting of a court, is at least doubtful: The familiar law which secludes the jury

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after their retirement from all out-door influence, is beyond doubt, and to that was the legislation of 1818 intended to be conformable.

If, then, the jury being out have not agreed when Sunday comes, and (the term still continuing) they ought not to be either discharged or adjourned, what shall be done, when, in the course of Sunday, they are ready to render their verdict? The Acts of 1818 suggest that the same course should be taken which should be taken on any other day; but independent of these Acts, charity and necessity authorize the receiving of the verdict, for relief of the jurors.

This court is, therefore, of opinion, that the verdict in this case is not void, and the motion is dismissed.

RICHARDSON, EVANS and FROST, JJ. and JOHNSTON, DUNKIN, CALDWELL and DARGAN, CC. concurred.

WITHERS, J. was absent in Charleston, at the rehearing of this case, and at the decision of it, and therefore gave no opinion.

Motion refused.

*Whether the court can sit on
Sunday —*

APPENDIX.

[Sir Henry Spelman's Original of the Terms, written in 1614,—(to which reference is constantly made on the subject of *dies non juridici*),—is not within my reach. The following extracts from Lord Mansfield's opinion in *Swann v. Broome*, with the annotations and references which are subjoined, probably contain much of what would be found in Spelman's Treatise, and present means of obtaining the history of the English law concerning Sunday.]

Extracts from Swann v. Broome, 3 Burr. 1597.

LORD MANSFIELD.

The single question is whether the Court can sit on a Sunday, and give a valid judgment.

No express direct authority has been cited in proof of the affirmative side of this question. Those authorities that have been urged in support of it have been only argumentative, from whence such a conclusion might, as it is said, be drawn.

But the history of the law and usage as to Courts of justice sitting on Sundays, makes an end of the question.

Anciently, the Courts of justice did sit on Sundays. (A)

The fact of this and the reasons of it appear in Sir Henry Spelman's Original of the Terms.

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It appears, by what he says, that the ancient Christians practised this. In his chapter of law-days, concerning the first Christians using all times alike, he says: "The Christians at first used all days alike for hearing of causes, not sparing (as it seemeth) the Sunday itself." They had two reasons for it. One was in opposition to the heathens, who were superstitious about the observation of days and times, conceiving some to be ominous and unlucky, and others to be lucky; and therefore the Christians laid aside all observance of days. A second reason they also had, which was, by keeping their own Courts *always open*, to prevent Christian suitors from resorting to the heathen courts. (B) Tidd, 44, 106.

(A.) I Wm. Bla. 499. Lord Mansfield: "Can it be supposed that the court did not sit on Sunday, when the terms were first framed, and so many returns were made on Sunday?"

After the general conversion of the Anglo Saxons to Christianity there must have been amongst them an observance of the great festivals of the church.—The terms are supposed to have had origin in or before the time of Alfred, and to have been arranged so as to avoid the principal seasons of religious solemnity, and those when the husbandman was most busy. If afterwards the courts sat on Sunday, less attention was paid to that weekly festival—first of all and most universally observed amongst Christians—than to Christmas, Easter and Pentecost, which were especially excluded from the terms. This could have been only at a very early period. In the league between Edward, the elder, (son of Alfred) and Guthrum, the Dane, it was ordained, "Festis diebus omnibus et legitimis jejuniis, ordalium (the ordeal by fire or water) nullus ingreditor neve ad jusjurandum addictor." (Saxon Laws, fol. 55.) Here Sunday is included in all festival days, and there is a prohibition, either of all legal proceedings, or of certain modes of trial in criminal cases.

The laws of Ina, early in the eighth century, also contained provisions of severe punishment for secular labor on the Lord's day. Saxon laws, fol. 2.

(B.) Before the conversion of Constantine, the church was a distinct society from the State. For the government of themselves, and to escape the scandal of carrying controversies amongst themselves into a heathen court, the primitive Christians gave power of judicature to the bishops, whose gravity and wisdom had obtained authority in the church. 2 Bac. Abt. 717. This submission to the bishops, at first voluntary, and after the conversion sanctioned and enforced by the Emperors, was the beginning whence proceeded the association of the Bishops with the Earl in the county courts, and the whole jurisdiction of the ecclesiastical courts in England.

To the time preceding the conversion of Constantine must be referred the usages and reasons spoken of in the text. Constantine (as may be seen in the next note) made imperial constitutions which exempted Sundays and the fifteen

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Spel. c. 4, p.
76.
1 Ld. Raym.
705.

But in the year 517 a cannon was made: "Quod nullus episcopus vel infra positus die dominico causas judicare præsumat." And this canon for exempting Sundays was ratified in the time of Theodosius, who fortified it with an Imperial Constitution. "Solis die (quem dominicum recte dixere majores) omnium omnino litium et negotiorum quiescat intentio." The whole cannon is also decreed verbatim in the Capitulars of the Emperors Carolus and Ludovicus. (C)

days of Paschal solemnity, (other festivals were afterwards added) from forensic litigation; and never afterwards, except a short period in the time of Julian, the Apostate, were there heathen courts to which Christians could be called under the empire.

If reference is made to the island of Great Britain, after there were Christian courts there, they were the courts of the State—no heathen courts existed contemporaneously, and the usage of all Christians enjoined a special observance of the Lord's day.

(C.) From an imperial constitution of Constantine: "Sicut indignissimum videbatur diem solis, venerationis suæ celebrem, alteriantribus jurgiis et noxiis partium contentionibus occupari, ita gratum ac jucundum est eo die quæ sunt maxime votiva (*good offices*) compleri; atque ideo emancipandi et manumittendi die festo cuncti licentiam habeant, et super his rebus actus non prohibeantur." Cod. Theod. Lib. ii. Tit. viii, de Feriis, leg. 1.

"Scaliger, *de emendat tempor*, p. 776, mentions a law of Constantine wherein the Paschal weeks, one before and the other after Easter Sunday, are ordered to be days of vacation from all proceedings at law." Bingham's Orig, Eccles. 7 vol. of his works, p. 87, 227.

Law of Valentinian, sen.: "Die solis qui dudum faustus habetur, neminem christianum ab exactoribus volumus conveniri, contra eos, qui id facere ausi sint, nec nostri statuti interdicto periculum sancientes." Cod. Theod. Lib. viii, Tit. viii. De exsecutoribus leg. 1. Repetitur Lib. xi, Tit. vii. De exactoribus, leg. x.

Law of Valentinian, jun.: "Solis die, quem dominicum rite dixere majores, omnium omnino litium, negotiorum, conventionum quiescat intentio. Debitum publicum privatum ve nullus efflagitet; ne apud ipsos quidem arbitros vel in judiciis flagitatos, vel sponte delectos, ulla sit agnitio jurgiorum. Et non modo notabilis, verum etiam sacrilegus judicetur, qui a sanctæ religionis instituto ritu ve deflexerit." Cod. Theod. Lib. xi, Tit. viii. de exactoribus, Leg. xiii. Repetitur Lib. viii, Tit. viii. de exsecutoribus Leg. iii.

Law of Valentinian, jun., and Theodosius the Great.: "Omnes dies jubemus esse juridicos. Illos tantum manere feriarum dies fas erit—(two months of harvest and vintage—the kalends of January—the natales of Rome and Constantinople—the birthdays of the Emperors—the anniversaries of their inauguration)—sanctos quoque Paschæ dies, qui septeno vel præcedunt numero, vel sequuntur in eadem observatione numeramus. Nec non et dies solis, qui repetito in se calculo revolvuntur." Cod. Theod. Lib. ii, Tit. viii, de Feriis, leg. ii.

Two laws of Theodosius the Great forbade criminal actions and corporal punishments in Lent. "Quadragesima diebus, qui auspicio ceremoniarum Paschale tempus anticipant, omnis cognitio inhibeat criminalium questionum."—Cod. Theod. Lib. ix, Tit. xxxv, de Questionibus leg. iv. "Sacratissimas quadragesi-

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There are likewise several other canons taken notice of in Spelman's Original of the Terms. One of them was made in the Council of Tribury, about the year 895: "Nullus comes, nullusque omnino secularis, diebus dominicis, vel sanctorum in festis seu quadragesimæ aut jejuniorum, placitum habere, sed nec populum illo præ-

mæ diebus nulla supplicia sint corporis, quibus absolutio expectatur animarum." Ibid, leg. v.

Honorius made a law adding to the exceptions from the observance of the *feriæ forenses*, the cases against masters of vessels who dealt fraudulently in the transportation of the public corn. Lib. xii, Tit. v, lex. xxxviii; and Honorius and Theodosius, jun., added another exception in cases against the Isaurian pirates. Lib. ix, Tit. xxxv, leg. vii. Another law of Honorius (lib. ix, Tit. iii, leg. i,) required the Judges to visit the prisons on Sunday, to look to the comfort of the prisoners.

The imperial laws above mentioned (except that for which reference is made to Scaliger) are found in the Theodosian code, which was first promulgated in the Eastern Empire, A. D. 433, and soon afterwards confirmed in the Western Empire, and of which the last of the *Novellæ* that were interchanged between the two empires, was in the year 448 before the canon of 517.

The Justinian code (A. D. 529, 534) contains some of the same laws, and some additional ones on the same subject. Lib. iii, c. xii, De Feriis, particularly (leg. viii,) a law of Theodosius, jun., enjoining the stay of all actions public and private, during the Paschal days, except "emancipandi et manumittendi licentiam;" leg. vii, a law of Justinian adding to the *feriæ forenses* before established by Valentinian, jun. and Theodosius the Great, Christmas, Epiphany, Pentecost, and the days of the Passion, of the Apostles; leg. iii, which required judges, people in the city and all artisans to rest, "venerabili die solis," but permitted husbandmen in the country freely to pursue their agricultural business (which a law of Constantine had also permitted in certain seasons;) and leg. xii, in these strong terms: "Dominicum itaque diem ita semper honorabilem decernimus, venerandum, ut a cunctis exsequutionibus excusetur: nulla fide jussionis flagitetur exactio: taceat apparitio: advocatio delitescat: sit ille dies a cognitionibus alienus: præconis horrida vox silescat: respirint a controversiis litigantes, et habeant federis intervallum, ad sese simul veniant adversarii non timentis, subeat animos, vicaria pœnitudo," &c.

See also the Pandects, Lib. ii, Tit. xii, De Feriis, Leg. ii, iii, ix, for exceptions in the heathen laws concerning the *feriæ forenses* observed before the time of Constantine, similar to those which were introduced into the constitutions of the Christian Emperors.

That which, in the text, is given as a Canon of 517, that laid the foundation for exempting Sundays from lawsuits, is really no more than the fourth title of the Capitulars of the Council of TARRACON, held A. D. 516. This council was only a Provincial council held in Spain, under Theodorick of the Ostrogoths, then King of Spain and Italy. The prohibition was directed against the clergy only, in reference to the usage already established of their expounding laws and administering justice, except in criminal matters; for, in that age, the decrees of councils derived their chief efficacy from the assent or confirmation of the civil powers; the disobedience even of the clergy was, without the aid of the civil magistrate, subject only to spiritual punishments, and all laws, as well in

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sumat cohercere." Another of them was made in the Council of Erpford, in the year 932, and afterwards became general, upon being taken into the body of the canon law by Gratian. And Sir Henry Spelman takes it, he says, to be one of the foundation stones to our Terms. "Placita secularia dominicis vel aliis festis diebus, seu eti-

matters spiritual as in those temporal, which restrained the laity, had the sanction of the civil authority. The purpose of this capitular was not to restrain the public tribunals, (for over them the council had no jurisdiction, and for them laws already existed under the Empire, and, probably, under the Ostrogoths,) but to prevent the indecency of the clergy's sanctioning abuses, which the license of the times indulged. The *capitulum quartum*, of which the title has been given, is as follows.—"Ut nullus episcoporum, aut presbyterorum, vel clericorum die dominico propositum cujuscumque causæ negotium audeat judicare: nisi ut hoc tantum, ut Deo statuta solemnia peragant. Ceteris vero diebus convenientibus personis, illa quæ justa sunt habeant licentiam judicandi, exceptis criminalibus negotiis." Labbe et Coss. Concil. Tom. iv, p. 1562, 1564.

The Council of MASCON was held under Clothaire, in France, A. D. 585.

Canon 1. Directed the keeping of the Lord's day: forbade the strife of lawsuits, or the pleading of causes, or the making of a necessity for yoking oxen on that day: expected all to be intent in singing hymns and praises to God. "If any one contemn this admonition, he shall be punished according to the quality of his offence. If he be a lawyer, he shall lose his privilege of pleading; if he be a rustic or a slave, he shall be severely beaten with rods; if a clergyman or monk, he shall be six months suspended from the communion of his brethren."

Canon II. Required that, in the six most holy days which followed Easter Sunday, no one should presume to do any servile labor, but, with one consent, all shall attend the service of the Paschal festival, "vespere, et mane, et meridie." Labbe & Coss. Concil. Tom. v. 980-1.

The council of EAPESFUR, Germany, was held A. D. 932, present—king Henry.

Capit. II. Forbade the holding of secular pleas on the Lord's days, the principal festivals, or even the lawful fast days: and declared that, for the advancement of religion, the most glorious King Henry had granted that no judicial power should have license to banish or condemn Christians for seven days before Christmas, and from Quinquagesima to eight days after Easter, and for seven before the nativity of St. John the Baptist; that there may be greater freedom in going to church and passing the time in prayer. Labb. & Coss. Tom. ix, p. 591.

The foregoing extracts from the proceedings of Councils, are set down in the *Decretum Gratiani*, pars ii, Causa xv, Quest. iv. p. 1172, except that, in the last extract, instead of the words italicised, it is said "the holy Synod hath decreed;" to the days enumerated are added, "from Christmas to the octave of Epiphany;" and the whole of the days enumerated are introduced as "supradictis diebus, id est"—shewing that they include all of the principal festivals and fast days.

Besides the canons mentioned in the text and in this note, many other canons, mostly of French and Spanish Councils, may be found forbidding the violation of the Lord's day, especially by the working at husbandry, which Constantine

am in quibus legitima jejunia celebrantur, secundum canonicum institutionem, minime fieri volumus." It goes on and appoints vacations; but these vacations were enlarged by the Council of St. Medard: "Decrevit sancta synodus, ut a quadragesima usque ad octavam Paschæ, et ab adventu Domini usque ad octavam Epiphaniæ, necnon in jejuniis quatuor temporum, et in litaniiis majoribus, et in diebus dominiciis, et in diebus rogationum (nisi de concordia et pacificatione) *nullus supra sancta evangelia jurare præsumat.*" By which expression is meant, that no causes should be tried or pleas holden on those days.

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These canons were received and adopted by our Saxon Kings. (D) And Edward the Confessor (E) made the following Constitution:

C. 7, 8, 9.
f. 77, 79.

and the Justinian Code had permitted, but the Church never well approved. A new canon on the subject was not evidence that no law before existed, but only that former laws had been ineffectual.

(D) 1 *Hale's History of the Common Law*, p. 36. "There are divers canons made in ancient times and decretals of the Popes, that never were admitted here in England."

Note C, by Sergeant Runninton. "The Canon law which obtained throughout the West, till the twelfth century, was the collection of canons made by Dionysius Exiguus in 520, the Capitularies of Charlemagne, and the decrees of the popes from Siricius to Anastasius. No regard was had to any thing not comprised in these. Between the eighth and eleventh centuries, the canon law was mixed and confounded with the Papal decrees from St. Clement to Siricius, which, till then, had been unknown. This gave occasion to a new reform or body of the canon law, which is the collection still extant under the title of *Concordia discordantium canonum*, first made by IVO DE CHARTRES in 1114, and perfected in 1151, (time of King Stephen, and fourteen years after the finding of a complete copy of the Pandects at Amalfi) by GRATIAN, a benedictine monk, from texts of scripture, councils and sentiments of the Fathers, in the several points of Ecclesiastical polity, and containing those constitutions which have been denominated, by way of evidence, *the Drones*, and forming the first part of the canon law. It is now generally known by the name of the *Decretum of Gratian*, which was formed in imitation of the Pandects of Justinian, and is a confused immethodical compilation, full of errors and forgeries. * * * * The authority of the canon law in England, (much abridged and restrained) depends upon Stat. 25 Hen. 8, c. 19."

Reeves' History of the English Law, chap. 1, shews that the separation of ecclesiastical from civil causes, was made by an ordinance of William the Conqueror; that the canon law first known in England, was formed by permission and under the authority of the Government; that in a national Synod, held A. D. 670, the *codex canonum vetus ecclesie Romanae*, was received by the clergy, and in the time of William the Conqueror, with the assent of his great council, the Episcopal laws were reviewed and reformed: that in 1152, the teaching of the civil and canon law was forbidden by Stephen, apprehensive of the consequences to which the novel and bold opinions in the collection of Gratian might lead, but that the study was promoted by the clergy, and furnished authority for every species of usurpation. See *Hallam's Middle Ages*, chap. 7.

(E) *Reeves' History E. L. Introd. ch.* "Edward the Confessor is said to have

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“Ab Adventu Domini usque ad octabas Epiphaniæ, pax Dei et sanc-

made a complete code of English law, for which the character of an eminent legislator has been conferred on him by posterity. By the loss of the volume which contained his collection, we are left much in ignorance as to the unwritten customs of the times. It is not so with the written laws, for we have many of these still remaining.”

“The first of the Saxon laws now in being, are those of King Ethelbert. These are the most ancient laws in our nation, and are said to be the most ancient in modern Europe. This King reigned from 561 to 636. The next are the laws of Hlothaire and Eadric, and of Wiletred, all Kings of Kent. Next are those of Ina, King of the West Saxons. After the Heptarchy, we have the laws of Alfred, Edward the elder, Athelstan, Edmund, Edgar, Ehelred, Canute. Besides these, are canons and institutions, councils and other acts of a public nature. These are in the Saxon language, and were, some of them, collected in one volume, in folio, by Mr. Lambard, in the time of Queen Elizabeth, to which additions have since been made by Dr. Wilkins. (in 1721) They compose, altogether, a body of Anglo Saxon laws for civil and ecclesiastical government.” [In the Library of the Court of Appeals at Charleston—mutilated and called “Saxon Laws.” The English translation of these Saxon codes, published by the Record Commission in England, under the superintendance of Mr. Thorpe, has not reached our Libraries.] See 2 *Inst. proeme*.

“We have refrained from mentioning some laws which have gone under the name of Edward the Confessor, as they have been rejected for spurious, upon the fullest consideration of antiquarians. They are in Latin, and bear internal marks of a later period. They are supposed to have been written or collected about the end of the reign of William Rufus; and are to be found in the collections mentioned above.”

Sir Matthew Hale, in his History of the Common Law, ch. 1, refers to Lambard's collection, and speaks of the laws of Edward the Confessor, as a compilation, whereof the English were always very zealous. *In note B. Sergeant Runnington* says, “In truth, what were in reality the laws of Edward the Confessor, is much disputed by antiquarians, and our ignorance of them seems one of the greatest defects in English History. The collection of laws in Wilkins, which pass under the name of Edward, are plainly a posterior and ignorant compilation. Those to be found in Ingulf are genuine, but so imperfect and contain so few clauses favorable to the subject, that there is no great reason for contending for them so vehemently.”

Hale's Hist. C. L. c. 4. “The manual, styled the Confessor's laws, was but a small volume, and contains but few heads.” Again, “many of the ancient laws which were approved and confirmed by William the Conqueror, and his *commune consilium*, are set down by Hoveden: and they are transcribed in Mr. Selden's notes upon Eadmerus, p. 173—the same which Ingulfus mentions to have been brought from London, and placed by him in the Abbey of Crowland, in the 15th year of William the Conqueror.”

Hume's Hist. of Eng. ch. 3. “The laws that pass under Edward's name were composed afterwards.”

Spelman's Glossary, Balivus. “Ipsasque ideo leges a recentiore vel auctas vel ad Nomanicum idiotisma redactas suspicor.”

The laws of Canute expressly enjoin that all jurisdiction of ordeal and oath shall be intermitted on all festival days, the fasts of the four times, and all other

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tæ ecclesiæ (F) per omne regnum; similiter a Septuagesima usque ad octabas Paschæ; item ab Ascensione Domini usque ad octabas pentecostes; item omnibus diebus quatuor Temporum; item *omnibus Sabbatis ab hora nona et tota die sequenti usque ad diem Lunæ*; item vigiliis sanctæ Mariæ, sancti Michaelis, sancti Johannis Baptistæ, Apostolorum omnium et sanctorum quorum Solemnitates a sacerdotibus Dominicis annunciantur diebus; et omnium sanctorum in Kalendis Novembris, semper *ab hora nona vigiliarum et subsequenti solemnitate.*" (G)

fasts solemnly appointed; likewise they declare a vacation of legal proceedings from the festival of Advent to the octave of Epiphany, and from Septuagesima to the fifteenth day after Easter. (Sunday is included amongst festival days.) Sax. laws, fol. 100.

In the laws of Alfred the ten commandments are recited and confirmed, but there is no other express reference to suspension of legal proceedings on the Lord's day. In the chapter concerning holidays, fol. 41, license is given to the free for twelve days from Christmas, the day Christ subdued the devil, the feast of St. Gregory, seven days before Easter, and as many after, the feast of St. Peter and St. Paul, and in the autumn the whole week before the feast of the Virgin, and the festival of all Saints; license is given to servants on the four Wednesdays of the four weeks in which public fast was used to be announced. In the chapter concerning sacrilege, fol. 30, double punishment is imposed upon theft committed on the Lord's day, Christmas day, Easter day, Holy Thursday, and the day of Purification, as well as in time of Lent. See note A.

(F.) *Reeve's Hist. E. L. ch. 4.* "The Anglo Saxons were governed by two reasons, the church and the necessity of cultivating the earth and collecting its fruits; in distinguishing the periods of term and vacation, the former they called *dies pacis regis*, the latter *dies pacis Dei es sanctæ ecclesiæ*; a division answering to that of the *dies fasti* and *dies nefasti* of the Romans, and to that of the *dies juridici* and *dies feriales* of the Civilians and Canonists.

A constitution made in the Synod held at Eanham, under King Ethelred, in the tenth century, forbade *judicium, quod anglie ordal dicitur, et juramenta vulgaria*, at times of festival and fast; also from Advent till the octave of Epiphany, and from Septuagesima till fifteen days after Easter. *Dugd. Orig. Jurid. p. 89 ch. 32.*

(G.) Mr. Foss, in his *Judges of England*, ch. 1, insists that originally there were only three terms, which were the three periods left after deducting the three longer intervals appropriated by this law to God and the Holy Church; so that Michaelmas Term formed no separate division, but, as well as Trinity, was comprehended in the long judicial period that commenced after the octave of Pentecost, and lasted till Advent, interrupted by no sufficient number of fasts or festivals to divide it into two; but that gradually a fourth vacation was made by the necessity of allowing time for collection of the autumnal products.

"That there were only three legal terms in the time of William the Conqueror, is strongly corroborated by the fact, upon which all historians are agreed, that he (and indeed several of his successors) always held his court, or as it was called "wore his crown," at three special periods of the year—Christmas, Easter and Whitsuntide. Regal magnificence and hospitality, the arrangement of the revenue, and the consideration of national affairs, would necessarily occupy se-

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These canons and constitutions were all confirmed by William the Conqueror (H) and Henry [*the First ?*] (I) the Second, (K) and so became part of the common law of England. (L)

veral of the earlier days of those festivals, and the conclusion of them would fall on the commencement of those periods which were specially devoted to the transaction of legal business."

(H.) *Reeves's Hist. E. L. ch. 1.* "We are told that in the fourth year of his reign, at Berkhamstead, in the presence of Laufranc, archbishop of Canterbury, William the Conqueror solemnly swore that he would observe the good and approved laws of the kingdom, particularly those of Edward the Confessor; and he ordered that twelve Saxons should make inquiry in each county, and return what those laws were."

Hale's Hist. E. L. ch. 9. "The King (William I.) swore inviolably to observe the laws which the holy and pious Kings, his predecessors, and especially King Edward, had established; yet it appeared not what those laws were, and therefore a *commune concilium* was held, and the ancient laws were approved and confirmed. * * * They were re-affirmed and mingled with the coronation oath of William I, and some of his successors."

Saxon laws, 124, 126. The laws of Edward, as now preserved, are preceded by the decrees of William, containing his express confirmation of them, with his additions. See also Dugdale's *Orig. Jurid.* ch. 4, p. 5, referring to Ingulph. *Hist.* p. 519, b. and Selden's *San. Angl. lib. 2, p. 123.*

(I.) *Hale's Hist. E. L. ch. 7.* "The great essay which Henry 1 made was the composing an abstract or manual of laws, wherein he confirmed the laws of Edward the Confessor; 'cum illis emendationibus quibus eam pater meus emendavit, baronum suorum concilio;' and then adds his own laws, some whereof seem to taste of the canon law. * * The whole collection is transcribed in the Red Book of the Exchequer, from whence it is now printed in the end of Lambard's Saxon laws."

Note C. by Sergeant Runnington. "There is a code which passes under the name of Henry 1; but the best antiquarians have agreed not to think it genuine. It is, however, a very ancient compilation, and may be useful to instruct us in the manners and customs of the times."

(K.) *Foss's Judges of England, Vol. 1, p. 162.* "According to the MS. laws of Henry 2, which remain in the Red Book of the Exchequer, the terms were at first settled in the manner in which they were left by Henry 1, (that is, by a charter of Henry 1, the Lent vacation which the law of Edward the Confessor had limited to "octabis Paschæ," was extended to "fifteen days after Easter.") But when Ranulph de Glanville was appointed chief justiciary, the King (Henry 2) by his advice, expressly ratified the laws of Edward the Confessor and William the Conqueror, and accordingly we find in Glanville's *Treatise* writs made returnable in Octabis or Clauso Paschæ, according to the old arrangement."—*Spelman's Reliquæ, Origin of the Terms, 81; Glanville, lib. ii, chap. ii.* See *Dug. Orig. Jurid. 90.*

(L.) Whether the constitution recited in the text was really in the compilation of Edward the Confessor or not, it had the same validity, if it was established as a law of the kingdom in the time of William the Conqueror or any of his successors. All the *dies non juridici* mentioned in this constitution, must have been observed before the Statute of Westminster the first was passed. John's reign afforded a fit opportunity for the establishment of any canon that tended to advance the clergy, by impeding the business of the temporal courts.

Afterwards, in succeeding times, there happened several alterations and relaxations. The Statute of Westminster the first, (M) and other statutes (N) were made to this purpose, and us-

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(M) *Stat. West. 1, c. 51.* Et pur ceo que grand charitie serra de faire droit a tous en tout temps ou mestier serroit.

Purview est per assentment des Prelates, que assises de novel disseisin, mort d'auncestor, et de darrein presentment fuissent prises en l'Advent, en Septuagesime, et en quaresme auxibien come le home prent l'enquesto; et ceo prise le Roy as Evegues.

2 Inst. 264. This Act beginneth with a maxim of law: "*Summa charitas est facere justilian singulis in omni tempore quando opus fuerit.*"

The canon of holy church, upon pain of excommunication, had forbidden the holding of any secular plea or the swearing of any man on the Holy Evangelists in certain seasons, which Britton (who was Bishop of Hereford, * and well versed in both civil and canon law) thus enumerates in addition to the Lord's days:— From the beginning of Advent to the eighth day after Epiphany, from Septuagesima to the eighth day after Easter, the Ember days, the days of the Great Litanies, Rogation or Cauge days, the week of Pentecost, the time of harvest and of vintage, which dureth from the feast of St. Michael the Archangel, and the solemn feasts of the Acts of the Saints. Special dispensations had been previously obtained for taking inquests and for occasional removal of the impediment which the Canon offered to the administration of justice. This Act was a general dispensation for taking three kinds of assizes in the seasons of Advent and Lent, obtained from the Bishops at the special instance of the King. See Reeves's Hist. E. L. c, 7, and c. 4. 3 Bla. Com. 275. Dugd. ch. 32.

The Act is a clear recognition of what was the previous law as to holy seasons. Its terms show to what an extent clerical usurpation had proceeded; and the fact that the dispensation thus obtained for certain assizes, has, ever since, without further legislation, served to legalize all judicial proceedings in the seasons mentioned in the Act, shows how intolerable the former restraint must have been.

(N.) Of these statutes the most material was 5 and 6 Ed. 6, c. 3. The preamble of that act, very verbose, declares "that times and days are appointed where-in Christians should cease from other labors, and apply themselves to holy works."

* * "Therefore the days are called holy days, not for the matter or nature of the days, nor for any Saint's sake, (for so all days and times are God's creatures, and all of like holiness,) but for the nature of the holy works whereunto such days are hallowed." * * "Neither is it to be thought that there is any certain time or definite number of days prescribed in Holy Scriptures, but that the appointment, both of the time and also of the number of the days, is left by the

* *John le Breton*, Judge, and afterwards Bishop of Hereford, died in May, 1275, 3 Ed. 1. The work called "Britton," cites Statutes of 6 and 13 Ed. 1; both of which periods were subsequent to the Bishop's death. The better opinion, adopted by Mr. Selden and others, seems to be that the work is only an abridgment of Bracton, done into Norman-French, with the addition of subsequent alterations in the law, published in the name and by the authority of the King, about 13 Ed. 1. *Henry de Bracton* or *Bretton*, whose name is sometimes written, also, *Bructon*, *Britton*, *Briton* and *Breton*, Judge and Archdeacon of Barnstable, died about 51 Henry 3, 1267.

2 Foss's Judges, 252, 260, citing Selden's notes to Henglean Magna, 5, and Dugd. Chron. Series. 2 Reeves's Hist. 89, 90, 281. 3 Bla. Com. 403.

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age,(O) or perhaps positive laws, not now extant, dispensed with other days that were formerly unjuridical.

authority of God's word to the liberty of Christ's church, to be determined and assigned orderly in every country, by the discretion of the rulers and ministers thereof, as they shall judge most expedient to the true setting forth of God's glory and the edification of their people" * * *

Sec. 1 enacted that the days following shall be kept and commanded to be kept holy days, and none others, to wit: all Sundays in the year, Christmas and the three following days: the days of the Circumcision, of Epiphany, of the Purification, of the Annunciation, and of the Ascension, Monday and Tuesday in Easter week, Monday and Tuesday in Whitsun week, and fourteen Saints' days, which were distributed through the year. "And none other day shall be kept and commanded to be kept holy day, or to abstain from lawful bodily labor."

[Of the days here enumerated, all the *dies non* which are mentioned by Lord Coke (2 Inst. 264) and also St. Philip and St. Jacob, and sometimes St. Peter, fell within the terms.]

Sec. 2. The even of the day next before each of certain feasts shall be fasted, and none other.

Sec. 3. Bishops may inquire and punish offenders by the censure of the church.

Sec. 4. Fasting in Lent, or on Fridays and Saturdays, is not forbidden, or on other days appointed by Stat. 3, Ed. 6, c. 19, saving only those evens whereof the holidays next following are abrogated by this Statute.

Sec. 5. If the feast be on Monday, the fast shall be on the even of Saturday preceding, and not on Sunday.

Sec. 6. Husbandmen, laborers, fishermen, and all persons of every degree, upon the holidays aforesaid, in harvest or any other time, when necessity shall require, may labor, ride, fish, or work any kind of work, at their free will and pleasure.

[This Statute was repealed 1 Mary, but the repealing act was repealed 1 James 1.]

Many Statutes before and after that of 5 and 6 Ed. 6, were passed concerning Sunday and other holidays, which are of great historical interest, but none of them directly affected the question of a Court's sitting on Sunday.

Statutes 50 Ed. 3, c. 5, and 1 Rich. 2, c. 15, prohibited arrests in time of divine service.

27 Hen. 6, c. 5. (1448) "In consideration of the injury to God and his Saints, because of fairs and markets upon the high and principal feasts, as Ascension, Corpus Christi, Whitsunday, Trinity Sunday and other Sundays, also the Assumption, All Saints and Good Friday," temporarily provided that fairs and markets (under pain of the forfeiture of the goods offered for sale) should cease on the days mentioned, except four Sundays in Harvest.

2 & 3 Ed. 6, c. 19, repealed all prior laws and usages concerning fasting and abstinence from meats, and forbade the eating of flesh upon any Friday or Saturday or the *Embring* days or Lent, or any other day commonly reputed a fish day.

5. Eliz. c. 5, forbade the eating of flesh on fish days. § 39. "Whosoever shall, by preaching, teaching, writing or open speech, notify that any eating of fish or forbearing flesh mentioned in this Statute, is of necessity for the saving of the soul, or that it is the service of God, otherwise than as other politick laws are, such persons shall be punished as spreaders of false news."

The Mirror of Justices (P) says, "abusio est que tient pleas per dimenches (*Sundays*,) ou per auters jours defendus, ou devant le

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This Statute was continued by 3 Chs. 1, and 16 Chs. 1, c. 9—subject to a reduction of penalties for the eating of flesh on fish days, made by 33 Eliz. c. 7.

A Stat. of 3 James 1, required divine service on every 5th of November, the anniversary of the discovery of the Gunpowder plot.

12 Chs. 2, c. 14, required the annual celebration of 29th May, as the anniversary of the Restoration.

12 Chs. 2, c. 30, directed that every 30th of January, (the anniversary of the execution of Chs. 1,) unless it shall be the Lord's day, and then the next day, should be forever set apart as a day of fasting and humiliation.

A declaration published by James 1, and read in the churches, was intended to promote sports and lawful recreations on Sunday. Two Acts for the better observance of Sunday were passed, early in the reign of Chs. 1, which forbade persons assembling on Sunday, out of their own Parishes, for sport; and, also, their following bull baiting or other unlawful sports in their own parishes. Subsequent temporary regulations were made perpetual by Stat. 29 Chs. 2, c. 7, which prohibited worldly labor, in general, on Sunday, and especially made void the execution or service on that day of any writ, process, warrant, order, judgment or decree, except in cases of treason, felony and breach of the peace.

A Statute of William 3, added to the holidays the days set apart by his Majesty, on extraordinary occasions.

The uniformity of process Act, 2 W. 4, c. 39, places Sundays on the same footing as Christmas day, and other days appointed for a public fast or thanksgiving, as to proceedings after the expiration of eight days from the service of process. An Act of 3 Geo. 4, had done the same, as to the opening of the Judges' commissions on the Circuits.

The Law Amendment Act, 3 & 4 W. 4, c. 42, § 43, passed in 1833, enacted that no holidays should be observed in the Courts, or in the offices belonging thereto, except Sundays, Christmas day, and the three following days, and Easter Monday and Tuesday.

Sir Edward Coke, (2 Inst. 261) writing after the Stat. of Ed. 6, enumerates the *dies non juridicos*, thus:—1. All Sundays. 2. Ascension day in Easter Term. 3. St. John the Baptist's day, when it falls in Trinity Term. 4. The Purification in Hilary Term; and 5. All Saints' and All Souls' days in Michaelmas Term. The two last were cut off by subsequent Statutes, which altered Michaelmas Term so that it began on the morrow of All Souls. Then, until the Law Amendment Act, the *dies non* were Sundays, Ascension or holy Thursday, the Purification or Candlemas, and St. John the Baptist's or Midsummer day, if it happened in Trinity Term—unless it was a Friday next after Trinity Sunday, in which case it was *dies juridicus*, by Stat. 32 Hen. 8.

1 Tidd's pr.
57; 2 W. Bla.
1316.

The Stat. of Ed. 6 continued to regulate holidays, chiefly, until 1833. Under it, the offices of Court were shut, or extra fees for opening them demanded, on the holidays, which did not fall within the terms. (See Tidd's Pr. 55, 106. 3 Chit. Gen. Prac. 101.) But between the holidays under the Statute and *dies non* at common law, the Courts made a distinction.

The Statute was intended to lessen, not to increase, the number of holidays, and seemed to have been framed with such reference to the Terms as that, even before they were abridged, not more than two holidays, besides Sundays, fell into one Term; it did not make void proceedings on holidays; it indulged a lax

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Cro. Eliz. 29.

soleil levie, ou noctanter, ou in dishonest lieu."(Q) * * * *

As to the observation, that the Courts of justice have never been restrained by Act of Parliament from sitting on Sundays, and that the 29th of C. 2, c. 7. does not extend to giving judgments,—

It was needless to restrain them from it by Act of Parliament. They could not do it by the canons anciently received and made a part of the law of the land, and therefore, the restraining them from it by Act of Parliament would have been merely nugatory. But fairs, markets, sports and pastimes were not unlawful to be holden

observance, and it provided no penalties besides ecclesiastical censure. For these or other reasons, the Courts at Westminster (which seem always to have struggled against the delays occasioned by interruptions of those Terms that had been wrested from the Church for the administration of justice) whilst they considered the Statute as commanding that *dies non*, before observed, but not mentioned in the Statute, should no longer be kept, did not find in the Statute an imperative requirement that holidays in the Terms should be kept, that were mentioned in the Statute, but were not *dies non* at common law. They kept inviolable Ascension day and Purification day; (1 Chit. R. 400—9 B. & C. 243,) but they would not suspend business on St. Philip and St. Jacob's day, (2 Smith's Rep. 203,) nor on St. Peter's; (7 Taunt. 182) as in like disregard of Statutes that contained no absolute prohibition, they refused to suspend on the anniversary of the Restoration, (7 Term. 332;) and on the anniversary of the Martyrdom, despatched common business before adjourning. The offices were required to be kept open on the days the Courts sat, and thus the Statute of Ed. 6, so far as it enjoined the keeping of holidays, had no effect in Term-time.

No statute was at any other time passed, which forbade proceedings in Court on particular days. To the common law, and not to any statute, has always been ascribed the invalidity of legal proceedings on Sundays and other *dies non*; and before the Amendment of the Law Act, no Statute concerning Sunday or other holiday expressly required its observance by Courts.

(O.) The Acts of 25 Hen. 8, c. 21, concerning Peter Pence and dispensations; of the same year, c. 19, concerning the Canon law; of 22 Hen. 8, c. 14, concerning sanctuaries; of 27 Hen. 8, c. 28, and 31 Hen. 8, c. 13, abolishing monasteries, and various other acts of that and the two succeeding reigns, whereby the Reformation was carried into effect, the Reformation itself, and the civil wars and religious strifes of the seventeenth century, must have lessened the reverence for some of the unjuridical days; and these causes, with the Statute of 29 Chs. 2, and other Statutes which, although silent as to the sitting of the courts, made a wide difference in other respects between Sunday and other holidays, may well be supposed to have introduced and confirmed usages which, in the practice of the courts, deeply engraved the common law concerning Sunday, but obliterated it entirely as to some of the other *dies non*, and almost as to all others.

⚡ Not one of the Statutes mentioned in these notes, nor any other English Statute concerning Sunday, holidays, or the Terms of the Courts, was ever made of force in South Carolina.

(P.) Reeves's Hist. En. L. ch. 9. "By some pronounced older than the Conquest, but it is probable that Andrew Horne, whose name it bears, took an old book of the same name, and in the reign of Edward II, worked it into the volume we now see." See Dugd. Orig: Jurid. c. 23.

and used on Sundays at common law; and therefore, it was requisite to enact particular statutes to prohibit the use and exercise of them upon Sundays, as there was nothing else that could hinder their being continued in use.

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In Mackalley's case, 9 Co. 66 b. it was objected that "Sunday is not *dies juridicus*, and therefore, no arrest can be made in it; and every one ought to abstain from secular affairs upon that day." But it was answered and resolved that no *judicial* act ought to be done in that day; but *ministerial* acts may be lawfully enacted in the Sunday.

(Q.) Conformable hereto was Law 10, Table 1, in the fragments of the Twelve Tables. "Let no judgment be given after the going down of the sun."

And by the Public Law of France, in the reign of Louis XIV, (2 Domat. b. 14, Tit. 6, § 4) it was forbidden to proceed to the trial of a criminal in the afternoon, when the crime of which he was accused was of so high a nature as to deserve punishment of death, natural or civil, of the galleys, or of temporary banishment.

Lord Coke, in his commentary on the Stat. of Westminster the first, c. 51, (2 Inst. 264,) says that from Sir John Fortescue it will be seen that there are *horæ juridicæ*, from 8 o'clock, A. M. till meridian; the Courts not sitting in other hours, but the Judges giving themselves to refreshment and study. This, as all see and many feel, is not the usage of modern times; but this, like some of the propositions quoted from the Mirrour, serves to point to a distinction between the abuse of discretion and the violation of prohibition—between what may be disapproved and what is void.

O'NEALL, *J. dissenting*.—In this case, I trust that, as I stand now alone in opinion, I may be permitted to say, that the case has been argued in the Court of Errors without any agency on my part. No one regrets more than I do, the great consumption of time in this court. Still it is, perhaps, a *necessary evil in the administration of justice*.

The Lord's day, it seems to be well settled, is that portion of time between Saturday evening midnight, and midnight Sunday evening. The question is can a verdict in a case at law be rendered in that time? *I am clear it cannot be*.

The Lord's day is not, like the Jewish Sabbath, resting on a positive command for its observance. But it is the day of the Resurrection; it is the day set apart from *then, as that* on which the followers of Jesus Christ should assemble themselves together. By the common consent of the Christian world, and I may therefore venture to say by inspiration, it has been set apart as a day of rest, instead of the Jewish Sabbath. No doubt works of necessity and benevolence may be done on it.

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66b.
See the case,
No. 617, Col.
1 McC.

3 Bur. 1601.

"*Dies non juridici sunt dies dominici*," (the non-judicial days are the Lord's days) "throughout the whole year." The only exception was, that necessary ministerial acts might be done. What are the ministerial acts here intended? They, as I think, were confined to service of process; and even that, by Stat. 29 Car. 2, c. 7, sec. 6, was limited to treason, felony, or breach of the peace. In *Johnson v. Satterwhite*, it was ruled that it is against law to serve writs (subpœna writs) on Sunday.

I have no idea that the receipt and recording of a verdict is a ministerial act. It requires the court to be in session. Lord Mansfield, in *Swann v. Broome*, tells us "it is impossible for the court to sit on a Sunday." "Some of these return days," says Tidd. 106, speaking of the return days of the English Terms, "happen on a Sunday, and evidently, when writs were formal, courts did actually sit on that day; but that practice having been long disused, it is now holden, that an appearance cannot be entered, nor any judicial act done, or supposed to be done, in the court until Monday." Is not an appearance as much a ministerial act as receiving a verdict? *Perhaps more so*. For it, the constructive presence of the court is sufficient. For the reception of a verdict, the court must be actually present.

When the jury present themselves in their box to deliver their verdict, the plaintiff has a right, before it is pronounced, to submit to a non-suit. This, technically, is the judgment of the court, and supposes the court to judicially pass on the matter. *A non-suit ordered on Sunday!* How can that be excused? Again, when the jury present themselves to render their verdict, they may, *in the discretion of the court, be polled*. This one would think was a judicial act. So, too, a verdict is not always right, as written by the jury. The Judge has the right, and it is his duty to order it corrected. Is not this a judicial act?

But the reception of a verdict on Sunday leads to this ugly state of things. The court must be adjourned on Saturday evening, if the jury are to be kept together, and their verdict to be received as soon as they may agree; when they do agree, if it be mid-day of Sunday, the Judge, the clerk, sheriff and attorneys are to be dragged from the Church to the Court House; and as the people retire from the house of prayer, they are to hear the sheriff proclaiming the adjournment, until Monday morning 10 o'clock. Such a spectacle has never been heretofore witnessed in South Carolina, and I hope never will. Since *Shaw v. McCombs*, it has been considered settled and established as law in this State, that a verdict delivered in on Sunday morning, after the expiration of the 12th hour, is void. It is true, however, in that case, that the term of the court had expired, and hence the deci-

2 Bay, 232.

sion, as far as stated, is not necessarily binding on us; but still the Judges did not seem to regard that in the decision; and after an acquiescence of forty years, it is better to abide by even a *dictum* on a point of practice, and which has operated *well enough*, rather than to unsettle it by a new rule of uncertain operation.

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But it is said, it is a necessary work, inasmuch as the jury would be kept together all Sunday, when a few moments might relieve them. If this were true, I might, and would, go a great way to discharge the jury. But there is nothing whatever in it. The Act of the legislature of 1818, when read and understood, in the plain sense of the words used, removes the whole difficulty. The preamble sets out the mischief, which was, that as jurors in Charleston were empannelled for one week, when the term was of several weeks duration, and in consequence of it, many causes of litigated and important nature, commenced and not determined within the term, prove to be mistrials; to remedy it, it was therefore enacted in the first section, "that any jury in Charleston district which shall be hereafter impannelled, and charged with the trial of any issue, civil or criminal, whose term of one week shall terminate or expire before the final decision of such issue, such jury shall not be discharged, as heretofore, but it shall and may be lawful for the presiding Judge to adjourn the said jury to the ensuing week, in like manner as juries are adjourned from day to day; and such juries shall duly attend at the time to which they are so adjourned, and resume the consideration of such issue, until such jury shall have finally made up their verdict, and disposed of such issue, or shall otherwise be lawfully discharged from the consideration thereof, any law, custom or usage, to the contrary thereof in anywise notwithstanding." In the second section, it is provided, "that any juror composing such jury, as shall be so adjourned, as aforesaid, who shall refuse or neglect to attend at the time and place to which he shall be so adjourned, in conformity with this Act, shall be subject to the same pains, forfeitures and penalties, as by the laws of this State are usually imposed upon jurors who shall make default." The third section extends these provisions to all parts of the State where courts sit for more than one week.

Acts of 1818,
p. 24.

The reading of this Act is so plain, that I confess, were it not that my brothers have come to a different conclusion, I would say, there could be no doubt, that when the jury could not agree before 12 o'clock of Saturday evening, they must be adjourned over until Monday morning, 10 A. M. and then resume the consideration of the case. The words certainly *mean that, and nothing else*. It has, however, been argued, that this construction would not do to be adopted after the jury have been charged with a case; then, it is said, they

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must be kept together until they agree. To this I answer, the legislature contemplated that very case. For they speak of a jury "charged with the trial of any issue, civil or criminal, whose term of one week shall terminate or expire before the final decision of such issue;" in such a case they have directed that they shall be "adjourned," "shall attend," "shall resume the consideration of such issue;" and after being adjourned, if they shall fail to attend at the time and place to which they shall be adjourned, they shall be liable to penalties, &c. It is plain, from such words, that the legislature knew what they were speaking about, and that they intended, in every case where the jury could not agree, within the week, that is before midnight of Saturday, they should be adjourned beyond Sunday. No doubt they weighed the evil of allowing a jury, after they were charged, to separate, with that of keeping 12 citizens, many of whom are husbands, shut up, separated from their wives and children, and kept from their religious duties on Sunday; and no doubt it was regarded as the less evil, to allow them to return to their homes, attend to their household duties, mingle in the worship of our common Father, on the Sunday, and then return on Monday, refreshed and calmed from the angry discussions of Saturday, in the jury room, to the consideration of the cause. In this view of the matter, I fully concur. For one, I can say, I have much less fear of a jury being tampered with, when allowed to separate, under proper instructions from the court, than when they are caged and shut up like wild beasts, to force an agreement. Tell jurymen in the presence of the crowd in the court room, that they are to suffer no one to speak to them on the case, while they are allowed to separate; and if any one does, to report him to the court, and I think no one ever will make an attempt to violate such instructions. An experience of more than thirty years does not enable me to point out a single instance of abuse under such circumstances. The fault of our judicial administration, is in treating jurors with too little consideration. Let them understand that they are regarded as gentlemen, and treat them accordingly, and I scarcely ever have a fault to find with them. Be these considerations, however, as they may, and even if I doubted the wisdom of the enactment, I would not dare to set up my notions against the Act. *Ita lex scripta* is enough for me. But it is said, it was discretionary with the Judge to adjourn the jury, or keep them together. The words are, "it shall and may be lawful." When they are used in an Act, they are equivalent to a command. In this case, however, they constitute the only authority of the Judge to keep the jury. *Before* he was bound to discharge them at 12 o'clock Saturday evening; *now*, he may adjourn them over to the next week.

With these views of the Act of 1818, it is to my mind, plain, that there was no necessity to receive the verdict on Sunday, and keeping the jury one moment after 12 o'clock Saturday night, was a violation of the Act.

It has been suggested, that if the jury deliberated after 12, and the verdict was the result of that, that then such deliberation and rendition would make it judicial and void. It is true, the verdict was delivered quarter past 12, and it may be there was not much deliberation in the 15 minutes, yet I apprehend we have no right to make such inquiry. The verdict, when rendered, is, in law, regarded as the conclusion of the jury, at that moment; and hence, according to the reasoning suggested by those in favor of this verdict, it could not be supported.

I regret, that while other States have passed laws to secure the observance of Sunday, we should in any way trench upon it. If I know myself, I have no Phrarsaical notions, which would reverse the object of the Sabbath, in making man for it, instead of holding it to be for man. Still its due observance as a day of worship and rest, is of so much importance to morals, and to the health and happiness of man, that I would do nothing calculated in the slightest degree, to diminish a due observance of it. I fear this decision will have that affect.

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ly, Law Re-
porter, New
Series, vol. 1.
p. 253; Web-
ster v. Abbott,
[same,] 117;
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RULES

FOR THE

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RULES settled in *Pell v. Ball*, 1st. Rich. Eq. 418.

1st. In no case whatever will an appeal lie directly from any Circuit Court of Law or Equity, to all the Judges assembled as a Court of Errors.

2nd. No cause shall be placed on the docket of the Court of Errors, unless by the order of the Appeal Court in which the cause was heard or opened.

3rd. No application will be entertained by either Court, by petition or otherwise, nor will argument be heard on any motion for sending a cause to the Court of Errors, after judgment rendered.

4th. In every case, the Court requiring the assembling of a Court of Errors, shall, so far as practicable, (unless all questions and matters involved in the cause be referred to the said Court,) specify the particular questions and points of law on which it may desire the judgment of that Court.

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1. In an action on the case, a recovery cannot be had on a contract, so as thereby to charge a dormant partner with a debt of the firm.—*Mowry v Schroder*..... 69

ADMISSIONS.

1. B. administrator of J. B. (decd.) who was the executor of W. B. (decd.) admitted in stating his accounts before the ordinary, that a legacy left by the will of

- W. B. to his son, was a debt due by his intestate, and a sum sufficient, of the assets, was left in his hands to pay it. This was held to be sufficient to charge him as administrator, with its payment at law.—*Buchanan v. Buchanan*..... 63
2. The Statute of limitations began to run from such settlement before the ordinary, and the defendant having continually admitted the debt, to a short time before action, it was held that such admissions prevented its operation..... *Id.*

ADVERSE POSSESSION.

Vide *Possession*, 1, 2.

AGENT.

Vide *Bills of Exchange and Promissory Notes*, 2. *Principal and Agent*. *Discount*, 1.

AGREEMENT.

Vide *Presumption*, 4, 5.

AIDER AND ABETTOR.

Vide *Indictment*, 3.

APPEAL.

1. A trial ordered of a slave after two mistrials, is not a subject of appeal, until the trial be had.—*State v. Lewis*..... 47
2. Generally an appeal does not lie from a Judge's order ordering or refusing a new trial in the case of a slave convicted of a crime..... *Id.*
- Vide *Contempt*, 4. *Supersedeas*, 1. *Clergy, Benefit of*, 1.

ARREST.

1. If a defendant resist an arrest, then there must be some corporal touching of his body, to make the arrest complete. But if the defendant submit, there is no necessity to touch his body.—*McCracken v. Ansley*..... 1

ARSON.

Vide *Clergy, Benefit of*, 2.

ASSIGNEE.

Vide *Master and Commissioner*, 2. *Trover*, 1.

ATTACHMENT.

1. A domestic attachment issued by a magistrate for the sum of fifty-six dollars, and levied upon the goods of a defendant who was out of the State, was set aside in favor of a foreign attachment issued the day after against the same defendant; the levy was adjudged to be void, and the goods held to be leviable under the foreign attachment.—*Lindau v. Arnold*..... 290
2. Third persons, garnishees or creditors, cannot take advantage of any irregularity in issuing or suing an attachment.—3 McC., 201 and 345..... *Id.*
3. Although a domestic attachment be good, its levy will not prevent a levy of a foreign attachment, subsequently issued, on the same property. The subsequent levy will constitute a subsequent lien. Such a case is not one in which an attachment cannot be levied..... *Id.*
4. When a fund is recovered in a Court of general or limited jurisdiction, and is actually or constructively in Court, and is to be paid over by its mandate, it is not the subject of levy..... *Id.*

ATTACHMENT FOR CONTEMPT.

Vide *Contempt*, 3, 4.

ATTORNMENT.

Vide *Landlord and Tenant*, 3.

ATTORNEY.

Vide *Contempt*, 1, 2. *Costs*, 4.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. M. to whom or bearer B's. note was payable, being about to negotiate it to J. in order to induce him to take it, wrote his name as maker,—held that it was a good note to bearer, and that M. was liable to pay it.—*Devore v. Mundy* 15
2. Where a promissory note is endorsed by an agent or attorney in the name of his principal, under an authority to endorse notes, that is not a sufficient authority for him to receive notice of the dishonor of the note; for an authority to endorse does not include an authority to receive notice of dishonor. Vide *Story on Prom. Notes*, sec. 309.—*Valk v. Gaillard* 99
 Vide *Promise*, 1, 3, 4, 5, 6. *Principal and Surety*, 1. *Fraud*, 1. *Damages*, 1.

BOND.

Vide *Master and Commissioner*, 1, 2.

CARRIER.

1. To exempt himself from liability, the carrier must show that the damage proceeded from some cause which was within the exceptions to his general liability.—*Cameron v. Rich* 168
 Vide *Principal and Agent*, 11.

CASES QUESTIONED.

1. The case of *Geddes v. Simpson & Morrison*, in 2 Bay, 533, questioned.—*Mcgett v. Finney* 220
2. The case of *Edson v. Davis*, 1 McCord, 555, approved of, and that of *Barino v. M'Gee*, 3 McCord, 452, questioned.—*Murray v. Stephens* 352
3. Case of *McCombs v. Shaw*, in 2 Bay, 232, examined, and the report of it corrected.—*Hiller v. English*

CASES APPROVED.

Vide *Cases Questioned*, 2.

CHALLENGE.

Vide *Slaves*, 1.

CHARLESTON.

Vide *City Council of Charleston*, 1, 2, 3.

CITY COUNCIL OF CHARLESTON.

1. A bond held by one living within the corporate limits of Charleston is subject to taxation by the City Council, though the obligor resides out of the city; and it is not objectionable that the tax should be imposed in cases where the obligor

- is solvent, and that this question should be left to be determined by the holder of the bond.—*State v. The City Council of Charleston*..... 217
3. An Ordinance of the City Council of Charleston, imposing a penalty upon retail grocers for having spirituous liquors on their premises, without a license to retail the same, is not in derogation of the "common rights" of the citizen, but a legal restraint imposed on a few for the benefit of the many, and within the powers delegated to the Council, by the Charter of the City.—*City Council v. Ahrens*..... 241
3. Although if Congress pass a law authorizing the importation of any article of commerce on payment of a duty, or even without, no State can pass a law prohibiting the importation, yet as soon as the article ceases to be a part of the foreign commerce of the country, and passes into the hands of the retailer or consumer, it becomes a part of the property of the citizens of the State, and subject to the laws of the State; therefore an Ordinance of the City Council of Charleston, forbidding spirituous liquors, in the hands of the retailer or consumer, to be kept in certain places, is not an interference with the power of Congress to regulate trade..... *Ib.*
4. The Ordinance of the City Council of Charleston, entitled "An Ordinance to prevent the establishment of any new burial grounds within the limits of the City," is both constitutional and within the powers granted to them by the City charter.—*City Council v. Baptist Church*..... 306
5. If the power exists in the City Council to pass an Ordinance, the court has no jurisdiction to control its discretion in the exercise of it, provided it be exercised consistently with the laws and the constitution of the State: nor is it necessary to the existence of the power, that there be a present occasion for its exercise. It is sufficient that a future occasion may demand it. The province of the court is merely to declare whether the power is granted..... *Ib.*
6. If an Ordinance be exceptionable on these grounds, an appeal against its enforcement, lies only to the corporators..... *Ib.*
7. The power which enacted an Ordinance may repeal it, unless the rights or privileges it conferred might be claimed in the nature of a contract..... *Ib.*
8. In a summary process under the ordinance of the city of Charleston, against loitering, in describing the negroes it is not necessary to set forth either the sex of the negroes or their names, or the names of their owners.—*City Council v. Seeba*..... 319

CLERGY, BENEFIT OF.

1. The Court of Appeals may give judgment after dismissal of an appeal in case of felony; and this, although the appeal has been abandoned and benefit of clergy prayed.—*State v. Sutcliffe*..... 372
2. Where the indictment charges the burning of a house, benefit of clergy is not taken away by the statutes which take it from the burning of a dwelling house, or barn having corn or grain in it..... *Ib.*

CLERK.

Vide *Costs*, 4, 5.

COLLATERAL UNDERTAKING.

Vide *Frauds, Statute of*, 1, 2, 3.

COMMISSIONERS OF ROADS.

Vide *Nonjoinder*, 1.

COMMON LAW.

Vide *Slaves*, 3.

CONFESSIONS.

Vide *Evidence*, 16.

CONGRESS.

Vide *City Council of Charleston*, 3.

CONSIDERATION.

Vide *Frauds, Statute of*, 3.

CONSPIRACY.

Vide *Evidence*, 12, 14.

CONSTITUTIONAL QUESTIONS.

Vide *Court of Appeals*, 1.

CONSTRUCTION.

- 1. The law will never, by any construction, advance a private to the destruction of a public interest; but, on the contrary, will advance the public interest, as far as it is possible, though it be to the prejudice of a private one.—*City Council v. Baptist Church*..... 306

Vide *Deed* 1, 2.

CONTEMPT.

- 1. The court refused to strike from the docket an appeal from the decision of the Circuit Judge, imposing a fine, after rule served to shew cause, upon an attorney of the court for contempt, although the fine had not yet been paid.—*State v. Hunt* 322
- 2. The Judge not only has power to fine for a contempt committed by an attorney in the use of improper expressions towards another attorney, in the argument of a cause in the presence of the court, but also he may, or not, in the exercise of his legal discretion, use that power, and the punishment following its use is altogether discretionary with him..... *Ib.*
- 3. Extraordinary cases may occur, in which the court might hold that the power to attach for a supposed contempt had been improperly used; but where the contempt is palpable, and where the defendant in contempt, without apology, puts himself in the attitude of justification throughout, these facts do not afford a case for the interference of the court..... *Ib.*
- 4. Every court has the power to fine for contempt, but notwithstanding this undeniable power, still whenever it is exercised, every citizen has the right to appeal.. *Ib.*
- 5. The provision of the Act of 1811, that no one shall be imprisoned without a hearing, renders the proceeding by rule proper in all cases of contempt of court *Ib.*

CONTINUANCE.

Vide *Practice*, 1.

CONTRACT.

- 1. The rule with regard to a written contract is, that the obligatory part of it, what the party undertook to do or perform, shall not be varied by parol evidence. But the date is no part of the contract. A deed is no deed until it is delivered; and if

the time of delivery be important, the true time may be shown, although it may be different from that set out in the writing, without a violation of any legal principle.—*McCracken v. Ansley*..... 1
 Vide *Action on the Case*, 1. *Nonjoinder*, 1. *Parters*, 2.

CONVEYANCE.

Vide *Former Recovery*, 2.

COSTS.

1. A public officer, against whom, for any official act, a prohibition may be sought is not liable for the costs of the motion, or of any proceeding which may ensue.—*State v. Jervoy*..... 304
2. Upon suggestion filed, issue joined, trial and verdict, after recovery upon a sheriff's official bond, costs are to be taxed as of right, by the officers of Court.—*Rowell v. Mulligan*..... 349
3. A suggestion well supplies the place of a declaration in an ordinary case..... *ib.*
4. When a suggestion against the sheriff and his sureties is tried, the clerk, in the taxation of costs, is not entitled to fifty cents for "notice;" nor is the attorney entitled to four dollars for "notice." For the "thirty day rule," required to be served upon the defendants, the attorney is entitled to two dollars..... *ib.*
5. The court doubted whether the clerk was not premature in taxing costs for entering "satisfaction," before it was ascertained whether satisfaction had been rendered in the case..... *ib.*

Vide *Principal and Bail*, 1.

COURT.

Vide *Judgment*, 1, 2. *Evidence*, 3. *Contempt*, 1, 2, 3, 4, 5.

COURT OF APPEALS.

1. It is for the Appeal Court, in which the cause is heard or opened, to determine whether there is a constitutional question involved in the case.—*City Council v. Ahrens*..... 241

Vide *Clergy, Benefit of*, 1.

CREDITORS.

Vide *Attachment*, 2.

DAMAGES.

1. In an action for a deceit in fraudulently transferring and representing as unpaid, a note which had been paid, the Court held, that the jury might well find the amount of the note, with interest, as the measure of damages.—*Spikes v. English*.. 34
2. Where the defendant gave the jury no means to determine as to his pecuniary condition, the Court will not disturb their verdict on the ground of excessive damages.—*Capehart v. Carradine*..... 42

DATE.

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DECEIT.

Vide *Fraud*, 1. *Damages*, 1. *Principal and Agent*, 2.

DECLARATION.

Vide *Costs*, 3.

DECLARATIONS.

Vide *Evidence*, 7, 12, 13, 14.

DECREE.

Vide *Judge*, 1.

DEED.

1. The deed of conveyance reserved "one square acre, containing my family burial ground," without defining the precise spot by lines and boundaries, but before its execution, the parties had agreed upon and marked out the space which was to be considered the graveyard: the Court *held* that the Circuit Judge had correctly charged the jury that they might consider the space thus marked out as the location agreed upon by the parties, although it was found to contain a little more than the square acre.—*Altman v. M^r Bride*..... 208
2. When the intention of the parties is ascertained, the rule that the deed should be construed most strongly against the grantor, is subservient to that..... 1b

Vide *Contract*, 1. *Evidence*, 6. *Presumption*, 6, 7.

DELIVERY.

1. Where it was obvious that the parties to a sealed note or obligation, executed it and left it in the hands of the principal obligor, to be delivered to the obligee only on condition that he would discount it, and the obligee had refused to do so—the Court *held* that there had been no delivery to him, either actual or constructive; and that to an action brought on the note in his name, either for his own benefit, or for that of any other person, the plea of *non est factum* was a good defence.—*Brooks v. Bobo*..... 38

DEMAND.

Vide *Promise*, 3, 6.

DENIAL.

Vide *Evidence*, 15.

DISCOUNT.

1. Plaintiff, as assignee, sued defendant as maker of a promissory note, which was past due before it was transferred, and defendant claimed to be credited with the amount of a note which the assignor had given to a third person, (which was also past due when defendant's note was assigned to the plaintiff,) and which defendant had agreed to pay as part of the note sued on; the Court *held* that the jury were properly instructed to allow the discount, if defendant had assumed to pay this note, and had been exclusively looked to and bound to pay it.—*Quackenbush v. Muller*..... 235

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ENDORSEE.

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ENDORSEMENT.

Vide *Indorsement*.

ESCAPE.

1. The sheriff may suffer a prisoner arrested on mesne process to go at large, without being liable for an escape, but the bail bond is the only sufficient excuse which he can have for not bringing in the body at the return of the writ. *Cook v. Irving*. 204

ESTATE IN REMAINDER.

Vide *Presumption*, 6.

EVIDENCE.

1. Evidence as to the reputation of a woman, acquired after the commencement of an action brought by her on a promise to marry,—held to be inadmissible for the defence.—*Capehart v. Carradine* 42
2. In an action on a promise to marry, if the defendant, in mitigation of damages, attempt to show the general bad character of the plaintiff, he will be held to show, not the fact that there are reports injurious to her character, but a reasonable or a good foundation for such reports; and also that he was ignorant of her character when he made the promise *Ib.*
3. The Court will not undertake to control a jury where there was evidence on the question submitted to them, although that evidence was not so satisfactory as it might have been.—*Richardson v. Provost* 57
4. All objections to the admissibility of evidence should be made, if known, at the time the evidence is offered. *Ib.*
5. The defendant would have given in evidence the record of a mortgage executed to him by his brother, although this was collateral to the issue, but it was held he must account for it, by showing the destruction or loss of the original, before the secondary proof could be let in.—*Mowry v. Schroder* 69
6. It is necessary to prove a deed, or any other attested instrument, by the subscribing witness. The acknowledgement of the grantor is incompetent evidence, though made under oath in an answer to a bill in Chancery. The rule is not confined to an issue between the immediate parties to the instrument; but is the same if the acknowledgement is offered as evidence against a third person, and whether it is the foundation of the action, or comes in collaterally, as part of the evidence in the cause. Vide 1 *Phil. Ev.* 465.—*Spencer v. Bedford* 96
7. The defendant may prove, by the subscribing witness, as part of the transaction, the conversation of the parties to the instrument, before or at the time of the execution, which may qualify it, or affect its validity. The rule extends to any declarations of the parties forming a part of the transaction, which materially affect the act done *Ib.*
8. The issue was whether the consideration, the receipt of which was acknowledged in the deed, had in fact been paid when the deed was executed.—When, for the plaintiff, the witness answered that he saw no money paid, which *prima facie* falsified the receipt, it was competent for the defendant, in reply,

- to show, by the admissions of the parties, that something besides money had been accepted in payment, or, in any other way, restore credit to the receipt. . . . *Ib.*
9. Parol evidence offered to prove the result of the trial had in the Court of Magistrates and Freeholders, *held* to be incompetent.—*State v. Green* (note) 128
10. On the trial of an indictment for the murder of a slave, evidence to show that the prisoner had but a short time before, through the instrumentality of the slave, procured the murder of his own wife, was *held* to be admissible, as supplying an inducement to the murder of the slave, and indicating the character of the motive with which it was perpetrated.—*State v. Posey* 142
11. Where the Court perceived sufficient evidence to sustain the conclusion of the jury, they refused to disturb the verdict on the ground that it was inconsistent in having affirmed the guilt of the principal, and acquitted those charged as accessories on the same testimony; (that of accomplices.) *Ib.*
12. Upon the trial of an indictment for conspiracy, when evidence has been given which warrants the jury to consider whether the prisoner was engaged in the alleged conspiracy, and had combined with others for the same illegal purpose, any act done or declarations made by one of the party, in pursuance and promotion of the common object, are evidence against the rest; but what one of the party may have said, not in pursuance of the plot, cannot be received against the others.—*State v. Simons* 206
13. When one party produces partial evidence of a conversation with the other party to the suit, the latter has a right to disclose the whole conversation. But the conversation of a witness with a *third* person, is not, in itself, evidence against any party to the suit. It becomes evidence only as it may affect the character and credit of the witness; and the re-examination of the witness must be limited to such inquiries as may put the Court in possession of all which may affect his character and credit. *Ib.*
14. Although there was evidence of the co-operation of the defendant with his co-defendant to elude the creditors of the latter in procuring a discharge under the insolvent debtor's act, sufficient to support a charge of conspiracy to detain and secrete funds and effects of the co-defendant from the claims of his creditors; yet where the only evidence that the defendant had any such funds, or that they had been deposited with him, consisted in the declarations of his co-defendant, whose unprincipled character was admitted by all parties, and who made the declarations under the strong influences of resentment, fear and interest, and in contradiction of circumstances; the fund deposited being the *corpus delicti*, the Court *held* the evidence in support of the charge against the defendant to be unsatisfactory, and ordered a new trial. *Ib.*
15. A denial of guilt is not excluded by the terms of the rule which excludes confessions, nor is it excluded by the reason of the rule. The denial of the prisoner that he had been near the place of the theft, or had even seen the stolen goods, may be given in evidence and shown to be untrue, for the purpose of establishing his guilt.—*State v. Clark* 311
16. Though the prisoner cannot be convicted by his confession of a fact tending to criminate himself, yet his statement of the fact may be received in evidence, and his knowledge of the fact may be connected with proof of its existence, so that his guilt may be inferred. *Ib.*
17. The rules of evidence are directed to the proof of the issue by competent testimony. They do not require that all the witnesses who may have been present when the offence was committed, or who may be supposed to possess information respecting it, should be produced. If the case be fully proved, the verdict will not be set aside on the suggestion that, if a certain witness had been cal-

- led for the prosecution, he would or might have given evidence to show the prisoner's innocence in Court. If any doubt arises respecting the guilt of the prisoner, from the obscurity which rests on any material circumstances of the offence, that is considered by the jury..... *Id.*
18. The obvious and necessary condition of the presumption of larceny, from the possession of the article unaccounted for, is that it should have been stolen; yet where the evidence against the prisoner was not limited to the presumption arising from possession, and where the whole evidence was brought to the view of the jury, which sufficiently established the fact that the article was stolen and that the prisoner was the thief, the Court will not disturb the verdict..... *Id.*
- Vide *Former Recovery*, 1. *Account, Books of*, 12. *Partners*, 2. *Possession*, 3. *Verdict*, 2. *Fraud*, 3.

EXECUTORS AND ADMINISTRATORS.

1. One of two Administrators may transfer by indorsement, a note due their interest.—*Mosely v. Graydon*..... 7
- Vide *Admissions*, 1, 2. *Marital Rights*, 1:

FELONY.

Vide *Slaves*, 1, 2, 3. *Clergy, Benefit of*, 12.

FIERI FACIAS.

Vide *Sheriff's Bond*, 3, 4.

FINE.

Vide *Contempt*, 1, 2, 3.

FORMER RECOVERY.

1. Action on the case for overflowing the plaintiffs's lands, by the obstruction of a mill dam. There had been a former suit between the same parties, and a verdict rendered for the plaintiffs. The defendant attempted to justify the continuance of the nuisance, by the allegation that the land was his own proper freehold, and by the production of a deed, the existence of which he had attempted to prove on the former trial. The former recovery was given in evidence, under the general issue. The Court held that it concluded the title to the land, so far as it was involved in that action, and that the defendant having failed then, to prove his deed, could not be permitted to do so now, to defeat the recovery of the plaintiff, for a continuance of the same nuisance.—*Jones v. Weathersbee*..... 50
2. In trespass to try title, a former recovery against one of the distributees of the land, and his acknowledgment in writing that the land in controversy was the plaintiff's, will not operate as a conveyance to the plaintiff of the share of the distributee. Even if it could otherwise so operate, it cannot when there is nothing in the record of the former recovery which shows that the trespass therein complained of was on the parcel of land in dispute. The utmost effect of it would be to bar the distributee himself, if so pleaded, should he afterwards claim alone. It will not be a bar to such distributee when suing jointly with his co-distributees, nor prevent their recovering the whole of the land.—*Murray v. Stephens*..... 350

FRANCHISE.

Vide *Acceptance*, 1, 2.

FRAUD.

1. An action on the case for knowingly and fraudulently selling and representing as unpaid, a single bill which had been paid, was held to have been properly brought by the party to whom the bill had been sold, although he had transferred it to another, by written assignment without recourse, for valuable consideration. The Court refusing to look beyond the plaintiff's present possession of the bill.—*Spikes v. English*..... 34
2. Sales at auction, or otherwise, of his goods, with the intent to defraud his creditors out of the proceeds, is such a fraud as the law contemplates, and will prevent the discharge under the Insolvent Debtor's Act, of the party making such sale.—*Hyams v. Valentine*..... 408
3. On the trial of a suggestion of fraud, where defendant's books have been introduced, it is not for the Circuit Judge to instruct the jury that they are evidence to discharge him. The jury are to pass upon their sufficiency for that purpose. *Ib.*
4. Any fraudulent device, executed, whereby a creditor is swindled out of assets to which he is entitled, is such a fraud as the law contemplates. And if a course of cunning trickery is employed to effect that object, the jury have a right to track the fraud through the circumstances which the perpetrator has sought to throw around it, and to employ for that end the test of common sense, in unravelling and weighing the circumstances, well proved, that may affect their judgment..... *Ib.*
5. On the trial of a suggestion of fraud, a verdict of "guilty generally," where all the grounds charge fraud of the same character, is sufficient..... *Ib.*

Vide *Pleading* 3, 4. *Principal and Agent*, 12.

FRAUDS, STATUTE OF.

1. Plaintiffs, auction and commission merchants, refused to deliver goods bought on a credit at their sale, by a Mrs. Owens, unless defendant would indorse her note for the payment. This, defendant verbally agreed to do, and the goods were delivered to, and entered in the name of Mrs. O. on their books. Defendant having failed to indorse as agreed upon, plaintiffs brought assumpsit against him. The court held the undertaking of defendant to be merely collateral, and as surety for Mrs. O. without consideration, and within the Statute of Frauds. *Taylor v. Drake*..... 431
2. If the person for whose use goods are furnished, be liable at all, any promise by a third person to pay that debt, must be in writing. *Leland v. Creyon*, 1 M.C. 100..... *Ib.*
3. The goods delivered to the original purchaser, are the consideration of his indebtedness, and cannot be extended also into a consideration to a party undertaking for him provisionally..... *Ib.*

"FREE INDIANS."

1. The exceptions in the Act of 1740 in favor of "free Indians in amity with this Government," apply to "free Indians," and their descendants, domiciled in this State, although disconnected with any tribe of Indians; and not merely to Indians preserving a national character, and in amity with the State. *State v. Belmont*..... 445

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INDIANS.

Vide *Free Indians*, 1.

INDICTMENT.

1. In an indictment against a white man as accessory to a murder committed by a slave, in laying the crime of the slave as principal in the murder, it is not necessary to allege that his offence was "*contra formam statuti*."—*State v. Posey*. 104
1. It is not necessary in an indictment against an accessory before the fact in a felony, to set out the conviction of the principal. Vide *State v. Sims* and *State v. Crank*, pages 29 and 66 of 2 Bailey's Reports..... *Ib.*
3. Although an act be done by one unknown, yet if another be actually or constructively present, aiding and abetting, it may be laid in the indictment as the act of the aider or abetter.—*State v. Green*, (note)..... 128
4. The distinction of principal in the first and second degree was a mere distinction in fact, and is no longer recognized..... *Ib.*
5. A count in the indictment charged the murder to have been committed by a person unknown, and that the prisoner was accessory thereto before the fact. The count was held to be sufficient..... *Ib.*
6. The grand and petit jurors were summoned to attend, and the indictment alleged that the bill was found at "*Horry Court House*," instead of "*Conwayborough*," (the place appointed by law for holding the Courts of Horry Dis-