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THE CANONS OF ETHICS OF THE AMERICAN BAR ASSOCIATION

For many centuries the bar of the Anglo-Saxon world has been the object of a more or less merited distrust by laymen. The consciousness of this distrust has in recent years grown somewhat acute, and one of the results of this has been, an effort, on the part of certain state bar associations, and of the American Bar Association to improve the standard of conduct of the profession. Realization of this improvement has been sought, not by any serious investigation into the antecedents of those who apply for admission to the bar, but in the invention of a body of so-called "canons", observance of which is to be expected by those who have already become members of the bar. Many of these "canons", devised doubtless with commendable intentions will on examination, be found inadequate to accomplish any proper end.

The initial committee on the subject, was appointed by the Association in 1905, and after prolonged deliberation, it reported. This report was after some discussion adopted on August 27th, 1908. It contains a preamble, and 32 so-called canons, which are followed by the form of an oath of admission which the courts or legislatures of the states are recommended to exact from those who are about to be admitted to the bar. It is not the purpose

of the writer to examine all these canons. A few of them however merit more than a passing attention.

THE PREAMBLE

The preamble lays down the proposition that in America, (meaning, probably, that part of North America commonly called the United States) the stability of all departments of government rests on the approval of the people. It is then, argues the preamble, "peculiarly essential that the system of justice be highly efficient, and that the public shall have absolute confidence in the integrity and impartiality of its administration. Justice must be pure and unsullied. That it cannot be unless the conduct and the motives of the lawyers merit the approval of all just men. That the 120 lawyers who enacted this preamble had a reasonably high sense of their own importance in the body politic composed of one hundred millions of people is indisputable.

CANON 1.

The first duty is to be respectful to the court. Why? "Not for the sake of the temporary incumbent," but "for the maintenance of its supreme importance." This is an implied assertion that the judicial office is of supreme importance. It is of vast importance. But, of vaster than congress or legislature? of President or Governor? The constitution recognizes three (often called) co-ordinate divisions of the government. It does not rank one above the other. If the judiciary has exalted itself above the others, it has done so, with the aid of the lawyers, by an illegitimate arrogation of importance. The judges are a branch of the administration of the country, and nothing makes it as such, more necessary, than are other branches. It is too much the fashion of some lawyers to make themselves and the judges that come from among them into a caste, and to semi-divinize themselves.

The canon, in further explanation of its enactment, proceeds to say that judges are not wholly free to defend themselves "from unjust criticism and clamor." In this

they are like presidents and governors and legislators, and incumbents of all the offices. In this licentious age, all official personages are subject to criticism, often ignorant and malicious. The judges are the only officers who can hale their critics before themselves, decide on the demerit of their objections, and punish it by fines and imprisonments or deprivation of their profession. The history both in England and the United States, of the judiciary does not support the suggestion that it is not abundantly able to defend itself not merely from unjust, but at times from just criticism.

But, a canon is a rule of conduct. What is the lawyer to do, to maintain the "supreme importance" of the courts? Nothing more than to maintain towards them a "respectful attitude." That courts may sometimes do wrong, is tacitly conceded, but it is a wrong only to the lawyer. If he has grievances, he may submit them to the proper authorities. But suppose the judge is drunken, or otherwise criminal, or indolent and neglectful of his duties. Suppose he is guilty of rank injustice. May the lawyer think those qualities "grievances," and may he make charges founded on them? Apparently, all the short comings of the judge must be kept within the breast of the attorney, unless he has a grievance. He dissociates himself from his fellow citizens. He considers in the behavior of the judge, only its effect on his own professional success, reputation, and emolument, not plainly a very lofty attitude for a citizen to maintain.

CANON 2.

The second canon considers the part to be taken by lawyers in the selection of judges. They should prevent political considerations from outweighing judicial fitness. Outweighing where? In their own minds and votes, or in those of their fellow citizens? Is the judicial candidate to be voted for without any reference to his being a democrat, republican, prohibitionist? If reference hereto is allowable, as the canon seems to concede, the lawyer must see that the weight he attaches to the politics of the can-

didate, while it may exist, and even equal the weight attached to "judicial fitness," shall not "outweigh" this latter consideration.

But, the lawyer should watch the candidates, and if he finds any of them "unsuitable for the Bench", he should earnestly and actively protest against the appointment or election of them. How? Must he go into the newspapers, during the election? Must he circulate and obtain signatures to written criticism of the candidates?

The only reprehensible quality of a judge adverted to, is the readiness, while in office, to pursue other gainful employments, whether business or political, or other (not which may consume time and thought that should be devoted to the public, but) which might "embarrass their free and fair consideration of questions before them for decision." How lawyers are to be able, better than others to foresee that candidates, if elected, will thus "embarrass their free and fair consideration," is not suggested.

It is to be noted, that the canon declares it to be the "duty of the Bar" to do the things above described. What Bar? Of the state? Of the county? And is this duty one resting only on the Bar, and not on each and all of the component members? If a public spirited lawyer unsuccessfully endeavors to persuade the "Bar" to work against the election of a bad man, has his duty ended?

Then comes apparently a duty which indisputably rests on the individual lawyers. They should impartially estimate their own ability to "add honor to the office" of judge, and should not seek the office unless they possess this ability.

The adopters of this canon, seem obsessed with the notion that the business of people is to "add honor" to things. A man becomes a judge. He is sensible, honest, just, as far as the law and juridical usages allow him to be. Is he "adding" honor to the bench, or is he simply not subtracting honor from it? or rather is he doing the things he is appointed to do, as he is expected to do them? This anxiety to add honor to things must strike the judi-

cious as juvenile. If a practical truism had to be expressed in a phrase, why did the 120 lawyers not say that a lawyer should not seek to become a judge, simply for the distinction which the office would bring to him. He should impartially believe that he could do the judge's work well. What matters it to a serious man whether doing his work well, does or does not "add honor" to the place, the office, in which he does it?

CANON 3.

The third canon prohibits lawyers, not relatives or special friends of the judges, from showing "marked attention" and unusual hospitality towards them. It forbids private communication with the judge, concerning pending causes. The lawyer must not attempt to gain from a judge special personal consideration. These as much involve duties of the judges, as duties of attorneys. The attorney does not give hospitality to the judge, unless the judge receives it.

CANON 4.

A lawyer appointed by the court to defend an indigent prisoner, ought not to decline for any trivial reason. The older lawyers with much business, are not usually selected by courts for this unrequited task. Is it the poverty of the man in trouble that imposes this duty, or the deference to the judge who has selected the lawyer? and who may suffer a certain embarrassment, if the lawyer declines?

If the duty is a branch of the general duty to assist the poor in want o rtrouble, it is hard to see why it should not be the duty of the attorney to defend men in civil actions when their cause is just, or even to prosecute suits for them as plaintiffs when property or money is unjustly withheld from them. The preservation of liberty is only one of the necessaries of men, and in civil actions for torts, the defendant runs the risk of the loss of this liberty. The duty imposed by the 4th canon is therefore, probably more a duty toward the court than toward the poor defendant.

CANON 5.

This canon states a doctrine, as well as a duty. It is the right of the lawyer, it affirms, to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused. The value of an opinion depends on the man who forms it, and the evidence upon which it is based. Suppose the attorney to have had the confession of the accused, or to have seen him perpetrate the crime. May he then undertake to defend the accused? The canon says, if the lawyer cannot defend, regardless of his opinion, innocent persons victims of suspicious circumstances, might be denied proper defense. But, suppose it is clear that the accused is not the victim of circumstances. It is one thing to affirm that a lawyer may defend the possible victim of circumstances; and another to say that, being an experienced, prudent, attorney, knowing how to weigh evidence, he may nevertheless defend one whom he for adequate reasons, believes guilty.

In the oath, the form of which is recommended for adoption by the American Bar Association, the applicant for admission to the bar says: "I will not x x maintain x x x any defense except such as I believe to be honestly debatable under the law of the land." If the defense is, I did not do the act, to believe it to be honestly debatable, means, if anything, not to believe in the defendant's commission of the act, or it means, although I believe the prisoner guilty, I also believe that the evidence producible by the prosecution and defense will be such that it can be plausibly debated before the jury, in such way that they may be put into doubt, and so will necessarily acquit. If the former interpretation is to be placed on its words, the oath seems inconsistent with the doctrine of the 5th Canon. If the latter, the attorney, in acting in conformity with it, virtually makes himself an accessory after the fact, to the felony (if of felony the defendant is accused) and for a motive less honorable than that which usually instigates such accessoryship (viz friendship for the principal felon)

for the motive namely, of a desire to win a fee, or the renown of forensic victory.

Even so good a man as the late Judge Sharswood, of the Supreme Court of Pennsylvania, in dealing with this topic, falls sensibly below the standard of integrity and high-mindedness which he usually defends. The prisoner, he argues (Legal Ethics p. 106) is in every case entitled to have the evidence carefully sifted, the weak points of the prosecution exposed, the reasonable doubts presented, which should weigh in his favor. "And what offense to truth or morality," he asks "does his advocate commit in discharging that duty to the best of his learning and ability?" The advocate believes, knows, that his client is guilty of an atrocious murder. He nevertheless undertakes to defend him. He will by cross-examination or otherwise weaken in the mind of the jury, the evidence against the prisoner which he nevertheless knows to be true and from which the only sound inference is that the prisoner is guilty. He will plausibly argue from circumstances, to awaken doubt in the untrained or ignorant intelligence of the jurors, of facts which he himself knows to be facts. He does this, simply because he is paid for doing it, or because his professional reputation for success, requires it. His act is nevertheless an upright and innocent one! The unsophisticated conscience of the layman has never accepted, and probably never will accept this apology for conduct most baneful to the state, and instigated by the most sordid of motives. It is the conduct of lawyers in prosecuting and defending causes known to them to be bad, on the pretext that every man has a right to have the evidence carefully sifted, etc., and the apology for such conduct offered by the most respectable of the legal profession, that have perpetuated the odium which attaches to the bar. When Swift described advocates as "a society of men bred from their youth in the art of proving by words multiplied for the purpose, that white is black, and black is white, according as they are paid," when Macaulay asks whether it be right that "not merely believing but know-

ing a statement to be true, the advocate should do all that can be done by sophistry, by rhetoric, by solemn asseveration, by indignant exclamation, by gesture, by play of feature, by terrifying one honest witness, by perplexing another, to cause a jury to think that statement false," the bar should well understand that the sophisms by which these tergiversations and falsehoods, these virtual alliances with promoters of unjust claims, with even the most wicked criminals, are excused, have not impressed, save with disgust and weariness, the unspoiled intelligence of the non-legal world. The records of great advocates, almost without exception are tainted. Their fame has been built up by chicanery, falsehood, hypocrisy. They have basely prostituted their powers to the misguidance of judges and jurors, in order, often, to assist clients to accomplish the most shocking injustices, in order to set adrift on society, the most hardened and ferocious criminals. Not untrue are the remarks of the historian, W. H. H. Lecky. "The master of advocacy will rarely confine himself to a calm dispassionate statement of the facts and arguments of his side. He will inevitably use all his powers of rhetoric and persuasion to make the cause for which he holds a brief appear true, though he knows it to be false. He will affect a warmth which he does not feel and a conviction which he does not hold. He will skilfully avail himself of any mistake or admission of his opponent, of any technical rule that can exclude damaging evidence—all the resources that legal subtlety and severe cross-examination can furnish to confuse dangerous issues, to obscure or minimise inconvenient facts, to discredit hostile witnesses. He will appeal to every prejudice that can help his cause. He will for the time, so completely identify himself with it that he will make its success his supreme and all-absorbing object, and he will hardly fail to feel a thrill of triumph, if by force of ingenious and eloquent pleadings he has saved the guilty from punishment, or enacted a verdict in defiance of the evidence."

When guilt is clear to the attorney, his undertaking

to wrest from an unsuspecting jury a false verdict of not guilty, can surely be tolerated by an unperverted conscience, only when every element of sordid consideration is absent from his mind, only when, in other words, he renounces all expectation of pecuniary gain. To consciously set a criminal free for money by misguiding the jury, is at least as bad as to rescue him from the penalties of the law by concealing him, by conveying him stealthily beyond the state, by offering a false scent to the officers who are on his trail. The defences of such conduct, that come only from the legal profession, reveal the extensive demoralization which it has undergone, during centuries of virtual irresponsibility.

The 5th Canon concludes with an admonition to prosecuting attorneys. Their "primary duty", says the canon, "is not to convict but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocense of the accused is highly reprehensible." Here appears tenderness towards persons accused of crime, so characteristic of many lawyers, of so-called criminal lawyers. The uninitiated would have supposed that "secreting witnesses" and the "suppression of facts" would be unworthy whether in civil or criminal cases, whether on the part of plaintiff or prosecutor, or on the part of the defendant. These acts it was worth the while of the Bar Association to condemn only when committed by the state's attorney. Was it because there is something in that office, that makes the hitherto upright and honorable advocate false and base enough to attempt even by improper means, to convict the innocent?

The American Bar Association undertakes to say what the duty of a certain attorney towards his client is. The state is the client of the District or State's attorney. Where is the authentic proof that the state hires him not to convict, but to see that justice is done? The state provides for the employment by the accused of counsel, sometimes undertaking to furnish counsel at its own expense, or at the expense of the county. Does it really ex-

pect its prosecuting attorney in addition to do the work of the defendant's attorney? Why should the former not be understood to do the best he can, to convince the jury of the guilt of the accused, leaving to the attorney of the latter, the function of exposing the weakness of the state's case, and of disclosing the exonerating evidence?

If it is true that the state expects its attorney not to strive to convict an innocent man, why does it not expect the attorney for the defendant not to strive to acquit a guilty man? While it is concerned that the innocent shall be convicted, is it not likewise anxious that the guilty shall not be acquitted? Yet it seems, if the Association's ethics expresses the expectation of the state, that attorneys, who in a sense, are officers of the state, may work for the acquittal of men whom they believe, with the best reason, that is, whom they know, to be guilty, while the state's attorney must not work to convict a man whom he knows or believes to be innocent. His duty, alone of attorneys, is to see that justice is done. All other attorneys are to see that their respective clients win, whether they be plaintiffs or defendants, and whether, if defendants, the case against them is criminal or civil, and whether they ought to win or not!

But who is it that has commissioned the 120 attorneys that enacted the Canons of ethics, among whom were not a dozen from Pennsylvania, to state for Pennsylvania what she employs her attorney-general and her district attorneys to do when they institute prosecutions?

CANON 7.

The value of this canon it is hard to realize. A client suggests to his attorney the employment of additional counsel. This, we are told, should not be regarded as evidence of a want of confidence, but the matter should be left to the determination of the client! Of what can the suggestion be evidence, if not of want of confidence in the knowledge or skill of the already employed counsel; in his physical strength, in his alertness and diligence in his capacity to bring influence to bear on court or jury?

Surely, a desire to reinforce the attorney must underlie the suggestion.

But, the canon seeks to create a duty on the part of a lawyer to decline employment, if the taking of additional counsel is disliked by the lawyer already employed! That is, the lawyer already employed is to have the power to prohibit the employment of any body in addition. Strange to say, however, the lawyer can be dismissed altogether by the client, in order to employ a second! What astonishing ethical finesse in these prescriptions!

The canon forbids efforts, direct or indirect, to encroach in any way, on the business of another lawyer. Such efforts are unworthy, says the canon "of those who should be brethren at the bar." A certain amount of legal business exists in every county. What lawyer A gets of this business, lawyer B does not get. Any act of lawyer A, his industry, skill, learning, fidelity, superiority of talent, by which "in any way" he gets business, is in a sense, an "encroachment" upon the business of others. Surely it is not forbidden. What it is to "encroach" is unfortunately not made clear. However, one mode of encroachment is permitted. The client of attorney A, may be dissatisfied with him. He may apply to lawyer B, to take the business already committed to A, and B may supersede A, "generally after communication with" A. What he is to say in this communication, is not revealed. Will it explain the client's complaints in extenso? Will it curtly notify A, that he is cashiered, in favor of B? Alas! that the ethics of this impressive subject should be so vague.

CANON 8.

The lawyer should hear fully the client's case before advising him—that is, he should not be a fool, in forming opinions on a complex matter, without knowing what it is. He should also give a candid opinion of the probable results of litigation, that is, he should not deceive his client, in order to inveigle the latter into furnishing him the opportunity to charge fees. If litigation can be averted

by a "fair adjustment," it should be advised against.

CANON 9.

This canon forbids the lawyer to communicate with the opposite party. He must have dealings only with that party's attorney. He should not attempt to negotiate the matter with this party. Sometimes the controversy could be adjusted, but for the ignorance, cupidity, or other worse qualities of the attorney. The opposite attorney, however clear this may be, must leave his own client and the client's antagonist, in the hands of the other attorney however corrupt or ignorant. What courtesy will often require, when no superior consideration negatives, is thus turned into a universal rule.

CANONS 10 and 13.

Canon 10 says that the lawyer should not purchase any interest in the subject matter of the litigation which he is conducting. Why? His client wants to sell an interest; he knows as well what the value of the interest is, as would the attorney. Yet the attorney may not buy it! Will owning an interest lessen, will it not increase his zeal and industry in the conduct of the litigation? The lawyer can form a better judgment of the chance of success in the suit, than the client. He will be at times, under a temptation to minify this chance to his client in order to induce a sale at a low price. But, is there to be a universal prohibition of a class of acts, because in some of them, there would be apt to be fraud?

The right to a contingent fee is virtually a right in the thing which is the subject of litigation. Patten v. Wilson, 34 Pa. 299. A sues B for damages for a personal injury. A employs X as an attorney, agreeing to let X have one third or one fourth of the sum recovered. Yet, the 13th Canon does not forbid contingent fees. It says that, where sanctioned by law, they should be under the supervision of the court, in order that clients may be protected from unjust charges. Where is here the precept, the canon? Is it the duty of attorneys, before agreeing to take con-

tingent fees to apply to a court for its consent? Does the canon do any thing more than by implication suggest that contingent fees should not be "unjust charges?" The enforceableness of a contract for a contingent fee has been recognized in this state. Perry v. Dicken, 105 Pa. 83. Sharswood, in his Legal Ethics, p. 160, deprecates the practice of stipulating for such fees. His chief objection seems to be that the contract deepens the lawyer's interest in the success of the litigation. How deep may this interest legitimately be? His reputation as a successful attorney ,is already at stake. Even in the absence of a contract for a fee conditioned on success, he knows that he will be able to demand and his client willing to pay a higher compensation, if he succeeds, than if he fails. The supposition that if he sues for that in which he has an interest, "he will cease to consider himself subject to the ordinary rules of professional conduct. He is tempted to make success, at all hazards and by all means, the sole end of his exertions," is fantastic. The ordinary lawyer, alas! feels so, whether his fee be conditioned on success or not. We must not delude ourselves into thinking that the practice of the law has been, despite the professions of some of its members, other than simply a business, and into doubting that, as those who pursue other businesses the lawyer wants gains, wants the reputation which will bring him more business and more gains. As he would rather work than be idle, he is willing to accept suits, and take the risk of going without compensation for his labor therein unless it proves successful.

CANON 12.

Canon 12 deals with compensation. It is a duty, apparently of lawyers not to undercharge, as well as not to overcharge. They should "avoid charges which overestimate their advice and services, as well as those which undervalue them." It is not often that the attorney needs instruction as to his duty in fixing fees towards himself. The attorney is told that charges may be excessive, even when the client is able to pay them. It seems that the lawyers are to consider themselves as a fraternity, and that the

"reasonable requests" of "brother lawyers," and of their widows and orphans without ample means, should receive kindly consideration. This canon is interesting, in that it specifies six things which may be considered in fixing the fees, among which are the ordinary charges of lawyers for similar services, the amount involved, and the benefit resulting from the service, the contingency or certainty of the compensation and, the frequency or infrequency of employment by the same client. The place that such economic suggestions have in a code of ethics, is hard to discover. They furnish no rule. Indeed the inventors of the canon admit that these considerations are "mere guides in ascertaining the real value of the service."

Following this dissertation on modes of estimating fees, is the naive suggestion, "In fixing fees it should never be forgotten that the profession is a branch of the administration of justices and not a mere money-getting trade." The lawyers that did not become such, in order to earn money, must be very scarce. None of them are visible above the horizon. It is pleasant for them to hold in vivid remembrance, the distinction between a "profession" and a "trade," and to recall constantly, that they are not in a "mere money-getting trade," nor in any trade at all. There would be a flavor of hypocrisy in the assertion that they were not in a "money-getting" profession. The ordinary attorney would think it fantastic idealism really to believe that the chief end of the practice of law was not to confer on him good money compensations, with the social distinction annexed to the business. One of the duties that the Association has omitted to inculcate is the avoidance of corporate and individual pharisaism.

CANON 15.

The 15th canon brands as false, the claim that it is the duty of the lawyer to do whatever may enable him to win his client's cause. The great trust of the lawyer, is to be performed within and not without the bounds of the law. He is not for his client to violate the laws, or engage in any manner of fraud or chicane. The lawyer must obey his

own conscience and not that of his client. It sometimes happens that the lawyer's conscience is better than that of the client, but, alas! the desire to win in too many cases, displaces conscience in both attorney and client.

It is rather startling to find imbedded in this canon a precept which seems wholly disconnected from its setting. "It is improper for a lawyer to assert in argument his personal belief in his client's innocence, or in the justice of his cause." Why? Untruly to assert it, would be a lie. Is it a question of the admissibility of opinion evidence or a question of ethics, that is involved? The attorney's opinion may as an opinion, be incompetent, and the lawyer should not inject incompetent evidence into a cause, but is it "unethical" for him to express it? What dimensions are strangely given to the conception of ethics!

In canon 15 occurs the statement "In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy and defense." There are a few lawyers who will refuse to serve a client in taking advantage of the statute of limitations, when the debt is unpaid, and the client admits that it is. This degree of scrupulosity seems to be condemned by the American Bar Association. Other men are expected if they are respectable to be better than the law compels them to be. The law allows various acts of deception which sound morals forbid. Honesty forbids a debtor's taking advantage of the forbearance or the neglect of his creditor, by refusing to pay his debt, but it is apparently the duty of the attorney to abet him, when he makes up his mind to cheat his tolerant creditor, by pleading the statute of limitations.

The statute of frauds, too, has, possibly, as has been said, caused more fraud than it has prevented. A is induced by C to lend $1000 to his son or brother B, by his, C's verbal promise to repay it. A thinks not of the statute of frauds. He trusts C's promise and makes the loan. B fails to repay it. C is requested to keep his promise and

refuses. He is advised by his attorney that he can escape because A trusted his pledged oral words merely and did not insist on a writing. C, it seems, is entitled to this advice from his attorney, and the attorney is under a duty to resist in court a recovery because A had too much confidence in C's honor. That C made the promise may be undisputed. He may confess to have made it. Nevertheless he has a legal defense, and the lawyer not only may but must, aid him in making it. Does this really express the morality of the American Bar Association? If C denied that he made the promise, and the attorney believed the denial, his availing himself of the statute would not be abhorrent. But the maxim of the Association makes it the right and duty of the attorney to avail himself of it, although the client unblushingly admits that he procured the loan, treacherously by means of an oral promise which he had no intention to keep, and with knowledge of A's ignorance or oblivion of the statute, or his guileless confidence in C's honor!

CANON 19.

This canon allows the attorney to testify for his client as to "merely formal matters, such as the attestation or custody of an instrument, and the like." As to other matters, if he is to be a witness he should "leave the trial of the case to the other counsel." Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client. The testimony as to "formal matters," is testimony to matters essential to success. Why essential testimony, if "formal", may come from the attorney, and he may continue to conduct the trial, but if not formal, may not, a discriminating casuistry is needful to discover. But, why should the lawyer not testify generally? He himself uses without scruple the testimony of his client, who is more deeply tinctured with bias, and whose veracity may be more justifiably suspected. Why is he not to testify himself? Will he more probably impose on the jury? Will he more likely perjure himself than the ordinary witness? Will the jurors not have sagacity enough to allow for this? It would be indelicate for him, in his argu-

ment, to enlarge on the unbelieveableness of the witness whom he has contradicted and on his own believeableness, but it does not follow from his testifying that he must likewise comment on his testimony. Why has a general principle been laid down, on this topic, when the endlessly varying circumstances of cases, make an invariable rule impracticable?

CANON 22.

If there was any serious reason for laying down the prohibitions of canon 22, the moral character of the bar must be at a desperately low stage. Among these things is misquoting the contents of a paper, the testimony of a witness, the language of the opposing counsel, or of a textbook or decision. Not less shocking, is citing as authority, a decision that has been overruled, or a statute that has been repealed. Possibly less grave is asserting as a fact, what has not been proved or concealing in the opening argument, so as to avoid possible confutation, points which are to be made in the final argument. It is a wholesome statement that evidence should not be offered which, counsel knows, the court should reject, in order to get it before the jury in argument for its admissibility. It must be remembered however, that nearly all evidence is admissible, if the opposite party does not object, and the offer must often be made, before it can be known whether objection will be made.

CANON 23.

This canon condemns attempts to curry favor by fawning, flattery, or pretended solicitude for the comfort of the jury. It wisely says that suggestions looking to the comfort or convenience of jurors, should be made to the court, out of the juror's hearing.

CANON 26.

This canon recognizes that a lawyer, as such, may render professional services before "legislative and other bodies," in regard to proposed legislation, and in advocacy of claims before departments of government. He must however, let his attorneyship be known. The Association does

not seem to have derived from this function of the attorney, the duty of maintaining towards the legislative or other bodies, or departments, of a respectful attitude, for the "maintenance of their supreme importance." If lawyers can maintain the supreme importance of the courts, why can they not that of the legislature and of the executive departments? Why has the Association modestly limited the Atlantean function of the bar, to the maintenance or the supreme importance of the courts?

CANON 28.

This canon avers that "the counsel upon the trial of a cause in which perjury has been committed, owe it to the profession and to the public, to bring the matter to the knowledge of the prosecuting authorities." The amount of perjury committed in the courts, is appalling, and much of it is encouraged by attorneys. Some, many of them are the suborners of perjury on a colossal scale. It is a pity that the canon does not take note of subornation of perjury, as well as of perjury itself. If lawyers should advise the prosecuting authorities, of their various machinations and devices to procure testimony that is untrue, the number of subornation of perjury prosecutions would be portentously enlarged and not a few of the smuggest and most respectable members of the profession would be defendants. But subornation has escaped the notice of the legal canonists; a most inexplicable instance of blindness to one of the most sinister facts in connection with the administration of justice.

CANON 29.

One of the most pointless of the doctrines of the canons, is that thus expressed; "The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well merited reputation for professional capacity and fidelity to trust." An advertisement is the establishment of a reputation! The lawyer needs to have his existence, and his profession known. Shall he take steps consciously to

create this knowledge? Shall he put out a sign? Shall he put a card in the newspaper? Shall he ask friends to disperse the information of his whereabouts? and o fhis capacity? Business cards are, it seems, permitted. Soliciting business by advertisements or circulars, or by personal interviews, is unprofessional. Procuring laudatory newspaper comments is also disapproved. All forms of self-laudation "defy the traditions and lower the tone of our high calling and are intolerable."

CANON 32

Entirely wholesome is the doctrine of the 32d canon. No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice the lawyer invites and merits stern and just condemnation. The canon concludes with the assurance. "But above all, a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen." The only regrettable matter to be noted here, is that the appeal is made not to the conscience for rectitude, of the attorney, but to his lust for a reputation for fidelity. The important thing, is, not to be honest and honorable, but to be honest and honorable in order to win the reputation of being so.

MOOT COURT

KEMP v. LEWIS

Landlord and Tenant—Constructive Eviction—Covenant Not to Lease Premises to Competitors

OPINION OF THE COURT

YATES, J. This is an action of assumpsit by a landlord against his tenant for rent. One Kemp leased to Lewis, the defendant, a store room, in a building, and covenanted not to let any other storeroom therein, to be used in the same business, selling drygoods. In violation of the covenant, Kemp leased another room to X, for the dry goods business, and X opened a store for the sale of drygoods therein. Lewis thereupon moved out and refused to pay rent accruing since his removal.

Was this breach of covenant by the lessor an eviction sufficient in law to release the defendant from his liability to pay for the rent accruing thereafter? This is the question we are now called upon to answer.

It is settled by the current of authority that an eviction of a tenant by the landlord of demised premises suspends the rent. The reason of this rule is well stated in Baron Gilbert's Treatise on Rents:—"A rent is something given by way of retribution to the lessor for the land demised by him to the tenant, and consequently the lessor's title to the rent is founded upon this: that the land demised is enjoyed by the tenant during the term included in the contract; for the tenant can make no return for a thing he has not. If therefore the tenant can be deprived of the thing letten, the obligation to pay rent ceases, because such obligation has its force only from the consideration, which was the enjoyment of the thing demised." Hoeveler v. Fleming, 91 Pa. 322.

Tiffany in his work on Real Property writes, "An eviction by the landlord may be either by actual dispossession of the tenant or it may be what is usually called a 'constructive' eviction. To constitute such a constructive eviction, that is an eviction not involving an actual ejectment of the tenant, there must be some act of a permanent character done by the landlord with the intention and effect of depriving the tenant of the full enjoyment of the premises, to which the tenant yields. This intention constituting the act of eviction, is however, but seldom directly shown and is inferred from the character of the act itself. The tendency of modern decisions is to hold that any act or default by the landlord which deprives the ten-

ant of the beneficial enjoyment of the premises, followed by the tenant's abandonment thereof, will constitute an eviction."

This view is supported by a number of Pennsylvania cases: McSorley v. Allen, 36 Sup. 271; Weighley v. Muller, 51 Sup. 125; Hoeveler v. Fleming, 91 Pa. 322; and the same view is apparently taken in other jurisdictions as is shown by Halligan v. Wade, 21 Ill. 470; Skally v. Shute, 132 Pa. 367; and Alger v. Kennedy, 49 Vt. 109.

The Pennsylvania cases say that under modern authorities a constructive eviction is sufficient to destroy the relation of landlord and tenant. The term "eviction" is no longer restricted in its application to its original, meaning of eviction by title paramount, or to the total deprivation of the premises by the landlord. Any act of the landlord which deprives the tenant of that beneficial enjoyment of the premises to which he is entitled under the lease, will amount in law to an eviction.

The following excerpt is from 24 Cyc. 1129: "The general rule is that in order to constitute an eviction there must be not a trespass merely by the landlord, but something of a permanent character to deprive the tenant of the use of the demised premises or of some part thereof. However it is not necessary that there should be manual or physical expulsion or exclusion from the demised premises, or any part thereof, to constitute eviction. An eviction may be actual where there is a physical expulsion, or it may be constructive, which altho an eviction at law, does not deprive the tenant of actual occupancy. There can be no constructive eviction without a surrender of possession of the premises by the tenant. Any interference by the landlord with his tenant's right to the enjoyment of the premises to the full extent secured by the lease authorizes the tenant to abandon the premises and exonerates him from the payment of the rent."

Do these debts show the defendant to be so exonerated from payment of the rent? Was Lewis justified in leaving the premises on the breach of the covenant by Kemp? We have come to the conclusion that he was. Kemp expressly covenanted with Lewis that he would not rent another room in the same building for the same business. He placed himself in the position, voluntarily, where he knew that he would be doing wrong in breaking the covenant. The plaintiff contends that the defendant had his action on the covenant for damages, and was therefore not justified in leaving the premises. But how would the jury assess such damages as these sustained in this case? It is no slight injury in the present day conditions of business, to have an ambitious and industrious business man competing with you, always ready to injure you in any manner whatever that will insure to him more business than his competitor. The profits lost by having a neighboring competitor of such a kind are merely conjectural and can not be adequately estimated by a jury. And

when the landlord expressly covenants to protect his tenant from such competition, he should not be allowed to endeavor to hold the tenant to his part of the contract when he himself has not performed his half. We therefore render judgment in favor of the defendant.

OPINION OF SUPERIOR COURT

The freedom from competition of a dealer in the same business, in the same building, was evidently a very important consideration for Lewis, when he accepted the lease. The ordinary remedy for the breach of a covenant by the landlord, is an action thereupon for damages. The learned court below very plainly exposes the inadequacy of the remedy, on account of the impossibility of showing to what extent the tenant's business is lessened by the presence of a rival store in the same building.

It is possible sometimes, to treat the covenant as descriptive of a condition. It would not be unreasonable so to construe this lease as to make the duty of continuing to retain possession and to pay the rent, dependent on the continued performance of the covenant not to lease another room for the dry goods business. Cf. University Club of Chicago v. Deakin, 106 N. E. 790, where a lease, similar to that before us, was so treated; 28 Howard Law Review, p. 522. When the landlord violated his promise, he authorized the tenant to withdraw from the premises, and to refrain from paying more rent.

The learned court below has treated the action of the landlord, followed by an abandonment by the tenant of the possession, as an eviction. An eviction suspends, during its continuance, the duty of paying rent. While literally an eviction is an improper deprivation of the possession, whereby the tenant's expected enjoyment of the premises is reduced or destroyed, that enjoyment may be reduced or destroyed without literal dispossession, and when it is so reduced or destroyed and in consequence, the tenant withdraws also from the possession, he will often be regarded as having been evicted. Assaults of the tenant followed by his vacation of the premises have been deemed an eviction, in Weighley v. Muller, 51 Sup. 125. Failure of the landlord to furnish heat and light according to his contract, was an eviction; McSorley v. Allen, 36 Super. 271; Cf. Schienle v. Eckels, 227 Pa. 305. The landlord's refusal to remove a building previously on the boardwalk at Atlantic City to the boardwalk after its former position had been abandoned, was said in Jackson v. Farrell, 6 Super, 31. to warrant the tenant's surrender of the possession, and his relief from further rent. Destroying a part of a building, in which the leased premises were, with the effect of diminishing the number of the tenant's customers, was held an eviction. Conlon v. McGraw, 66 Mich. 94. A similar result was announced, in Coulter v. Norton,

100 Mich. 389, where a tenant of a cigar stand in a hotel was held evicted by the closing of the hotel. Lessening the availability of a part of a building, let as a hotel, by leasing other portions for a saloon, was called an eviction in Hallligan v. Wade, 21 Ill. 470.

In Tucker v. Dupuy, 210 Pa. 461, a physician took a lease of offices in a building. Subsequently, the lessor's grantee of the reversion altered the rest of the building into a hotel, and interfered with access to the offices, whereupon the tenant brought an action for breach of the covenant for quiet enjoyment. Approving a judgment for the defendant, on a demurrer to the statement, Fell, J. mentions that "There was no express agreement to rent the rest of the building for offices only, and none can be implied from the relation and duties of the parties." In the case before us, there was an express covenant with respect to the letting of the rest of the premises.

The able opinion of the learned court below well sustains the conclusion reached by it, and the judgment is affirmed.

SANASON v. FAIRVIEW

Negligence—Liability of Father For Son's Default—Automobile as "Dangerous Instrumentality"

STATEMENT OF FACTS

The plaintiff was injured by the negligence of the defendant's 17 year old son, while driving the defendant's 60 horse power automobile. The son habitually drove the car with his father's consent and at the time of the accident, was driving it with his father's consent, but entirely for his own pleasure.

Clark, H., for plaintiff.

Howard, for defendant.

OPINION OF THE COURT

BURKE, J. The question to be decided in this case is whether the relation existing between Fairview, the owner of the automobile, and the driver of it, his son, was such as would make Fairview liable for the injury sustained by Sanason, in consequence of the son's negligence.

The mere fact that the defendant was the father of the driver of the machine is not in itself such a relation as will place responsibility upon him. In volume 29 Cyc. 1665, we read:—"At common law it is well established that the mere relation of parent and child imposes upon the parent no liability for the torts of the child committed without his knowledge, or authority, express or implied."

Brown, in his work on Pennsylvania Negligence, Vol. 2, page 1043, says:—"A person is not liable for the acts or negligence of another, unless the relation of master and servant or of principal and agent be established between them." Allen v. Willard, 57 Pa. 374.

We must therefore determine whether there existed between father and son, the relation either of principal and agent, or of master and servant.

An agent is one who undertakes to transact some business or to manage some affair for another, by the authority and on account of the latter and to render an account of it. Vol. 1, Bouvier's Law Dic. p. 116. In the present case, the son undertook no business of the defendant's, nor did he manage any affairs for him by driving the car. The son was not, then, the agent of the defendant.

Let us now determine whether there was a relation of master and servant. A person is deemed a master who has the superior choice, control, and direction of the servant, and whose will the servant represents, not merely in the ultimate result of the work, but in the details.

A servant has been defined to be (1) a person employed to labor for the pleasure or interest of another, especially in law, one employed to render service or assistance in some trade or vocation; but without authority to act as agent in place of his employer; (2) an employee; (3) a person hired to assist in domestic work. 26 Cyc. 965.

It is very evident that the son was not employed to labor for the pleasure or interest of his father. On the contrary, he was driving the machine exclusively for the pleasure he himself derived from it. That he was not an employee is equally true. Nor was he hired to assist in domestic work. He was acting in pursuit of his own pleasure rather than working for anyone.

The doctrine contended by the learned counsel for the plaintiff amounts to this: That the pleasure of the family in its utmost detail is the business of the father.

In the case of Parker v. Wilson, 43 L. R. A. (N. S.) 87, the court said: "To hold that the son in the pursuit of his own pleasure with an automobile owned by his father, was engaged in the business of the father is a doctrine, we think, which has no foundation in reason or common sense. In theory it overlooks well settled principles of law; in practice it would interdict the father's generosity, and his reasonable care for the pleasure or even the well-being of his children by imposing a universal responsibility for their acts."

In the case of Bard and Wenich v. Yohn, 26 Pa. 482, the son was driving a team of his father's when injuries were received by the plaintiff due to the son's negligence and the defendant was not held

liable, although he assented to the son's using the team for his own benefit. The court said: "When a person employed by one as a servant, is using the team of his master, for his own purposes and benefit, and in the absence of and without any directions from the master, uses the team so negligently as to occasion injury to a third party, the master is not liable for such injury although he assented to the servant's using the team for his own benefit." In this case, the son was a hireling of the father's, and still the father was not held liable.

The learned counsel for the plaintiff cites two Pennsylvania cases where the owner of the machine was held liable. The facts, however, are not analogous to those at bar. In Moon v. Matthews, 227 Pa. 488, the driver of the automobile was a licensed chauffeur, in the employ of the defendant and in Strohl v. Levan, 39 Pa. 177, the son was driving a team of horses but the father was riding with the son, at the time the plaintiff was injured. In the latter case the father by his presence approved of the acts of his son and thereby incurred liability. The doctrine of these cases cannot be considered in deciding the case at bar, because of the great difference in the facts.

Between Fairview and his son, therefore, the relation of master and servant did not exist.

The next question is: Was the defendant negligent in permitting his son to operate the automobile? We think he was not. By statute in Pennsylvania, a boy 16 years of age may operate a motor vehicle, and in the case at bar the defendant's son was 17.

An automobile is not a dangerous instrument, and the father was not negligent in allowing his son to operate it. Parker v. Wilson, 43 L. R. A. (N. S.) 87; Smith v. Jordon, 211 Mass. 269; Knight v. Lanier, 74 N. Y. Supp. 999; Steffen v. McNaughton, 142 Wis. 49.

The son drove the machine habitually and it is reasonable to infer that he was competent to drive it on this occasion. Should Fairview be held responsible for his son's negligence in operating the machine, when he had no reasonable grounds to anticipate an accident? To hold him responsible would be unjust and contrary to the great weight of authority. Judgment is therefore given for the defendant.

OPINION OF THE SUPERIOR COURT

Until the adoption of the automobile as a common vehicle of transportation, the ordinary rules of master and servant were considered sufficient to determine the liability of an owner of a vehicle of transportation for injuries caused by its negligent use by another.

For reasons perhaps not clearly conceived, and surely not

clearly stated, many courts have deemed it expedient to hold the owner of an automobile to a stricter accountability than that imposed by the doctrine of respondeat superior.

The question is most frequently presented for determination in cases where an injury was occasioned by a "family automobile" while operated by a member of the family other than the owner, and in these cases an accountability greater than that resulting from the doctrine of respondeat superior has been contended for, and, in some cases, imposed.

Various theories of responsibility have been propounded. It has been seriously contended that the owner is liable by reason of his ownership alone, but this doctrine has been uniformly rejected by the courts.

The so-called doctrine of "dangerous instrumentalities" has likewise been frequently and almost uniformly rejected by the courts. Lewis v. Amorous, 3 Ga. App. 50, 59 S. E. 338; Parker v. Wilson, (Ala.) 60 South 150, contra; Hays v. Hogan (Mo.) 165, S. W. 1125.

Another theory which may be described as the "family automobile" theory has received recognition in several courts. According to this theory where a father purchases an automobile for use by the members of his family for the purpose of pleasure, he is liable for the negligent operation of the machine by any member of the family so using it. The basis of this doctrine is that the automobile is, under such circumstances, being used for one of the very uses for which the father kept it; that it is a pleasure machine and when used for pleasure by one of the children it is being used in the business of the owner. Daily v. Maxwell, 152 Mo. App. 415, 133 S. W. 351; Stone v. Morris, 47 Ky. 386; Davis v. Littlefield, 97 S. C. 487; Birch v. Abercombie, 74 Wash. 486.

In other jurisdictions this doctrine has been expressly repudiated. Doran v. Thomsen, 76 N. J. L. 754, 71 Alt. 296; Maher v. Benedict, 108 N. Y. S. 228; Parker v. Wilson (Ala.) 60 South. 150; Linville v. Missen, 162 N. C. 95, 77 S. E. 1096; Schumer v. Register, 12 Ga. App. 743, 78 S. E. 731.

It has been asserted on one hand, that the "family automobile theory" is based on "reason and authority," and, on the other, that it has "no foundation in reason or common sense." Whether it or the opposite doctrine is "callously technical and little short of calamitous" is a question upon which there seems to be a serious conflict of decision which finds expression in a number of well considered and well written opinions.

After a perusal of all of the opnions in which this question has been considered, we are persuaded that the so-called "family automobile" theory should not be adopted. If a father entrust an automobile to a very young or incompetent son, he may well be held

liable because of his own negligence. But where the son is compos mentis (except as afterwards shown by the joy ride) the father should not be liable. The agency relationship is difficult to conceive and the idea of vicarious enjoyment is far too fanciful. "Qui facit per auto facit per se" is not a maxim of the law.

COMMONWEALTH v. SARAH MULLINS

Murder in the First Degree by Poison—Accessory to Suicide—Sec. 74, Act of March 31, 1860

STATEMENT OF FACTS

Mr. Mullins was confined to his bed, unable to move. Among other medicines he used mineral waters which were placed daily near his bed by Mrs. Mullins, who was his nurse. He was very despondent and averred on more than one occasion that he would take his life, were he able. On one occasion Mrs. Mullins placed arsenic, which Mr. Mullins had purchased before his sickness, on a stand near the bedside. She brought it there on a tray which contained the mineral waters and along with the arsenic were the mineral waters which were to be used that day. Mrs. Mullins did not mention the poison, in fact, she did nothing—simply placed the tray on the stand and left the room. Mr. Mullins took the poison, which resulted in his death that day. Mrs. Mullins is to be tried for murder in the first degree.

Schneller, for the Commonwealth.

Royal, for the defendant.

OPINION OF THE COURT

McGUIRE, J. Murder as defined at common law is "unlawful homicide with malice aforethought." Steph. Dig. Cr. Law, art. 223. The words "malice aforethought" are used here in a very vague sense. They may mean any one of six different situations; but, there is only one which we will deal with at present. Malice aforethought may exist when the defendant knows that his act is likely to cause death or great bodily harm, altho he has no actual intention to injure any person, and may wish the contrary. Clark's Criminal Law, page 190.

The 74th section of the Act of March 31, 1860, reads: "All murder which shall be perpetrated by means of poison, or lying in wait, or any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration of, or attempt to perpetrate any arson, rape, robbery, or burglary, shall be deemed murder in the first degree, etc." This section if any is applicable to the case at bar.

The section above quoted classes murder by poisoning with "other" wilful, deliberate and premeditated killing, and it is implied that only such poisoning is murder of the first degree as is committed with knowledge, that the article given is a poison and that as such it will probably kill, and with the intention that it will kill. Trickett's Criminal Law, page 769.

If the poison was delivered by some one else, or taken by the deceased without delivery, the felonious intent would be equally accomplished and the guilt the same. Com. v. Earle, 1 Wharton 525.

When poison is administered unlawfully, and without any good intention, and death ensues, the law will presume that the killing was intentional and voluntary and with malice aforethought, and it will be murder in the first degree. State of Iowa v. Wells, et al., 61 Iowa 629.

A homicide by administering poison, with intention of mischief and for an unlawful purpose, with knowledge of the danger to human life, altho without intent to kill, is murder at common law, and under the statute murder in the first degree. State v. Wagner, 78 Mo. 644. The statute on this point in Missouri is precisely the same as that in Pennsylvania.

If poison is wilfully administered, if purposely administered, that is, if it is administered with knowledge that it will be likely to kill, and with the purpose that it shall kill, the crime is murder in the first degree. Trickett, Criminal Law, page 770.

In the famouh English Gore case, Mrs. Gore had mixed poison with an electuary provided by a druggist, which she bought for the purpose of killing her husband. The electuary was subsequently returned to the druggist, and to demonstrate that the electuary was harmless, as he supposed, he took some of it, from which he died. In this trial the judge ruled, that Mrs. Gore was guilty of murder for the law couples the event with the intent, and the end with the cause, Beale's Cases, 209. The learned counsel for the defendant argues that Mr. Mullins's act is one of suicide, and suicide not being a crime in Pennsylvania, the accomplice cannot be punished with more severity than the principal. The court is unable to agree with this contention, as it would be a travesty on justice to permit this woman to escape simply because the unfortunate suicide is beyond the pale of the law.

One who advises another to commit suicide, and is present when the act takes place is guilty of murder. Com. v. Bowen, 13 Mass. 356.

When one gives poison to another in order that the deceased may take it, and the latter takes it in his presence, the party is guilty of murder. Blackburn v. State, 23 Ohio 165.

To furnish poison to another, for the purpose and intention that the person to whom it is delivered shall commit suicide therewith, the poison being taken by the suicide for that purpose, and resulting in death, makes the party furnishing the same a principal in the first degree. Blackburn v. State, 23 Ohio 165. The consent of the deceased, the free co-operation of the deceased, does not exempt the adviser, aider and abettor from the guilt of murder. "The half-crazy, despondent, suffering, hopeless man may well be dispunishable for his act, directed to himself while the other who counsels or assists him should be the subject of the sternest condemnation." Supra.

It is our conclusion, that the acts of the defendant taken all together are such as justify us in rendering a verdict of murder in the first degree.

OPINION OF THE SUPREME COURT

Self killing is not a crime in Pennsylvania. In former times England, Massachusetts, and possibly other states, attempted to censure it. The self killer being dead, his poor body was desecrated. He was denied Christian burial. His remains were interred, not in a consecrated churchyard or cemetery, but in some highway, and heaps of stones or other contrivances were erected to apprise the profane in passing, that the corpse of the self-killer was below them. This method of dealing with suicide was prompted by the reflection that a poor wretch to whom life had lost its attractiveness, would be seriously deterred from self-murder, by the anticipation of the contumely with which his dead body would be treated by the ignorant crowd, instigated by the officers of government. It was much easier to desecrate a dead body than to lend succour to it living, when needy, or hope to its despairing possessor, and in this better way, lessen the motive for death.

As men have grown civilized, the state has abandoned these puerile styles of vengeance, and left the act of self-killing, or of attempt at self-killing, without punishment.

The statute which prohibits murder can not be extended to embrace self-murder, without absurdity.

A difficulty is presented, when the effort is to punish one who advises, commands, assists another to kill himself. If self-killing is no crime, how can one who advises it be guilty as principal of the 2d degree or as accessory before the fact? At common law the accessory could not be convicted, until the principal had been convicted. It would follow that, when self-killing was not a crime, and there was no other principal than the deceased, no one could be an accessory to it. "There is no guilty principal, and there cannot, therefore, be an accessory." 1 McClain, Crim. Law, p. 169.

The Act of June 3d, 1893, 1 Stewart's Purdon 1049, concerning the punishment of accessories provides that every principal in the 2d degree or accessory before the fact to any felony punishable under any act of assembly of this commonwealth, for whom no punishment is provided, shall be punishable in the same manner as the principal in the first degree is by such act punishable." But, as no act of assembly punishes the suicide, no accessory before the fact or principal of the 2d degree would under this statute be punishable, when there was no principal other than the suicide himself.

The Act of March 31st, 1860 § 74, 1 Stewart's Purdon, p. 1043, says that any person who becomes an accessory before the fact to any felony, whether at common law or by statute, may "be indicted, tried, convicted and punished in all respects as if he were a principal felon." The suicide himself is not a principal felon; and if he were, he is not punishable at all.

Perhaps the principle may be applied, that when A procures B to do an act which would be a felony, and B is irresponsible because of ignorance, insanity, etc., since B is not guilty A will be treated as the only principal though he is not present when the deed is committed. Says Wharton, 1 Crim. Law, p. 225 (10th edition): "A party, also, who acts through the medium of an innocent or insane medium or a slave, is guilty, though absent, as principal in the first degree, while he would be guilty only as accessory before the fact at common law, were the agent a responsible and conscious confederate. * * * * If therefore, a child under the age of discretion, or any other person excused from responsibility for actions by defect of understanding, ignorance of the fact, or other cause, be incited to the commission of murder or any other crime, the incitor, though absent when the act was committed, is ex necessitate liable for the act of his agent, and a principal in the first degree."

We hold, then, that since the self-killer is not responsible, the instigator, etc., of the act, though absent when it is committed, must be treated as the only principal; as the killer.

The defendant put arsenic within the reach of the deceased knowing of his desire to commit suicide. The jury could properly infer that she intended that he should take it and kill himself, if he wished. He did take it, and died.

The learned court below has not considered whether the killing by the defendant, should be deemed malicious and therefore murder, or non-malicious, and therefore only manslaughter.

It can hardly be said that, however pure his motives, one has a right to assist another to death, by providing him with the means. The time may come (perhaps, under the influence of the stupendous war in Europe, is at hand) when respect for human life will be deemed a superstition, especially, when the man being racked with

incurable pain, or his estate being irreparably destroyed and he reduced to abject misery, continuance in life appears to him and to the few that really care for him, as an enormous calamity. When that time comes, those who help the desperate to a euthanasy, may be deemed merciful and kind. But that time has not yet come. A few more months of barbarous and barbarizing exploits by the belligerents must precede its advent.

But, are we not now prepared to see that the most sacred emotions of love and pity, may urge one man to put an end to the distressful existence of another? And when A, influenced by these sentiments, assists B to the solacing sleep of death, must we say that his act is malicious? If A, made angry, suddenly kills his offender, the law "mercifully" says his act is not malicious, and the homicide is not murder, but only manslaughter. Shall less be said for a killing, which does not spring from a self-regarding passion, but from kindness, pity, love? We think the jury ought to find whether the element of malice existed in the act of the defendant, and that it should have been informed that malice could not be inferred simply from the fact of aiding the deceased to kill himself.

We must therefore reverse the judgment. Reversed with v. f. d. n.

BOOK REVIEW

Rules of Law for Churches. Rulings by the Civil Courts Governing Religious Societies, by G. M. Boush, of the Pennsylvania Bar, Attorney for the Board of Home Missions of the Reformed Church in U. S. Cleveland, Ohio, Central Publishing House, 1915, pp. 215.

This book is a collection of decisions by the state and federal courts on the rights, powers and duties of religious societies, their members and judicatories and their property rights. The purpose of making this collection appears to have been to enable those connected with any religious organization "to readily find what they need for their guidance in the exercise of their duties and the maintenance of their rights and privileges." The writer has departed from the usual form of law book. There are no chapters. There are no section headings nor anything to indicate the subject under discussion at any point. Great care seems to have been taken to prepare a minute index and doubtless this remedies the defect referred to. The book contains a table of the cases cited. We know of no other recent work on religious corporations and a compact hand book of this kind should meet a wide demand from church trustees and their counsel.