

Law; and the principle of the rule includes, also, the defense arising from insanity, or infirmity.

In accordance with our views is the doctrine of *People v. McCann*, 16 N. Y. (2 Smith) 58, where the subject is most ably discussed. *Ogleton v. State*, 28 Ala. 692; *United States v. McClure*, U. S. District Court, 7 Law Rep. (N. S.) 439, by *Sprague, J.*; 1 Am. Lead. Cr. Cases 347, and note, and cases cited.

Such, also, we think, has been the course of trials in this State. It was clearly so on the trial of Corey, in Cheshire County, for murder, in 1830, October term, before the Superior Court of Judicature, *Richardson, C. J.*, presiding, where the defense set up was insanity. The court charged the jury, that the State had no claim to their verdict until they were satisfied, beyond all reasonable doubt, that the prisoner was guilty; and in that case the only question was, whether he was insane, the guilt otherwise being clear.

So was *State v. Prescott*, tried in Merrimack County, September, 1834, before *Richardson, C. J.* In that case, which was for the murder of Mrs. Cochran, the fact of killing was also clear, and the only defense was insanity. The judge charged the jury, that it was their duty not to pronounce the respondent guilty until every reasonable doubt of his guilt was removed from their minds. And, again, he said, "We are of the opinion that if, under all the circumstances of the case, you have any reasonable ground to suppose that the prisoner could not have had the use of his reason, you are bound to acquit him."

With these views of the law, and the course of our own courts, there must be

*A new trial.*

---

### SMITH v. SMITH.

**BELLOWS, J.** This was a libel for divorce for the cause of extreme cruelty. In such a case it is not sufficient to make a general allegation in the language of the statute, but the acts of cruelty should be specified with reasonable certainty as to time, place, and circumstances, that the court may see the character of the acts complained of, and whether they were committed within its jurisdiction, and also whether the application for the divorce was made in a reasonable time after such acts were done.

If the application is delayed so long as, under the circumstances, to create a presumption of condonation, sufficient cause for the delay should be stated and proved.

As to the description of the acts relied on, no precise rule can be laid down; but in general terms it may be said that it should give such description as the nature of the act will admit, fixing the time, place, and other circumstances with such distinctness as will show its quality. *Fellows v. Fellows*, 8 N. H. 162. Tested by these rules,

the libel is defective, stating only in general terms, acts of cruelty by beating, &c., between January 1, 1855, and the filing of the libel, and at the same time stating a continued separation since August 6, 1858; so that for aught that appears, the acts of cruelty may have been committed five or six years ago, and yet no reason assigned for the delay in applying for a divorce.

The libel must, therefore, be

*Dismissed.*

---

WHIPPLE *v.* WHIPPLE.

BELLOWS, J. In divorce cases, reasonable notice of the taking of depositions is ordinarily such notice as is required by the rules in other cases, and such notice not having been given, the depositions in this case must be rejected.

---

BARKER *v.* REMICK.

Where the sheriff is the nominal or real party to a suit, writs and other process must be directed to and served by the coroner—but the sheriff is not disqualified by the mere fact that he is interested, or is of kin to one of the parties.

A plea in abatement speaks ordinarily of the time when it is pleaded, and not of the commencement of the suit, and therefore an allegation that the sheriff is a party, not being the party of record, does not imply that he was such when the suit was brought, and the plea is bad.

In this case the defendant filed a plea in abatement, as follows :

And the said Remick comes and defends, &c., when, &c., and prays judgment of the writ aforesaid, and that the same may be abated because, he says, that on the fourteenth day of October, 1857, he, the said Remick, was sheriff of the county of Carroll; that he continued so to be the sheriff of said county from that time until a long time after the defaults, wrongs, and grievances, set forth in the plaintiff's said writ, are supposed and alleged to have happened: to wit, until the fourth day of January, 1861; that the said Charles H. Parker, the deputy sheriff named and described in the plaintiff's said writ, whose alleged defaults are set forth in the plaintiff's said writ as the plaintiff's cause of action against the said Remick, was, at the time of the suing out of the said plaintiff's said writ, and at the time of the service thereof, and ever since has been and now is the sheriff of the county of Carroll; that the plaintiff's said writ is directed to him, the said Parker, as the sheriff of the county of Carroll or to his deputy, for service; that the plaintiff's said writ was served upon said defendant by one Benjamin E. Thurston, and the said Benjamin E. Thurston, at the time he made said service, was a deputy of the said Parker for the