

words "sell and dispose of," was supplied by intendment. And see *Ailstock's Case*, 3 Grat. 650.

"If the sense appear, nice exceptions ought not to be regarded," said Lord ELLENBOROUGH, in *The King v. Stevens*, 5 East. 260. See, also, *The King v. Airey*, 2 East. 33, 34; 1 Ch. Cr. Law 172.

Two hundred years ago, Sir MATTHEW HALE lamented the existence of an undue regard for the "unseemly niceties" "required in points of indictments," and the "over easy ear given to exceptions, * * * whereby more offenders escape than by their own innocence, to the shame of the government, to the encouragement of villainy, and to the dishonour of God." Hale P. C. 193; Step. Cr. L. 182-185.

These "great strictnesses" were enforced in favor of life, in the times when no less than a hundred and sixty offences were declared by act of parliament to be worthy of death. 4 Bl. Com. 18. In the present age these "unseemly niceties" do not seem to be required.

The motion to quash was properly denied.

Exceptions overruled.

ALLEN, J., did not sit.

CROWLEY v. HURD.

An officer making an arrest without a warrant, upon a view, and between sunset and sunrise, is not liable, under s. 6, c. 236, Gen. St., for discharging his prisoner without carrying him before a magistrate.

QUI TAM, to recover a penalty. The declaration alleges that the defendant, being an officer, upon view of an offence committed by one C., arrested him without a warrant, between sunset and sunrise, and did not promptly carry him before the police court within twenty-four hours next after the arrest, but, after detaining him one hour, allowed him to depart. The defendant demurred.

Copeland & Edgerly, for the plaintiff.

G. W. Burleigh, for the defendant.

STANLEY, J. This action is brought under s. 6, c. 236, Gen. St., which provides that in all other cases the officer arresting without a warrant shall promptly carry the person arrested before the police court or a magistrate, that a complaint may be made. The provisions of this section do not apply to this case.

Here the arrest was made under s. 4, between sunset and sunrise, and the defendant had the right to detain his prisoner, or discharge

him at any time within twenty-four hours after his arrest, without carrying him before the magistrate; and by discharging him within that time he did not incur the penalty sought to be recovered here.

Demurrer sustained.

ALLEN, J., did not sit.

PRESTON, *Adm'r*, v. THE TRAVELLERS' INS. CO.

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A petition for the removal of a suit from a state court into the circuit court of the U. S., under the act of March 3, 1875, must be filed at the first term at which the parties, being in court, or being bound to be there, are not prevented, by the law of procedure, from going to trial.

A general replication of waiver, containing no averment of facts constituting a waiver, is bad.

In assumpsit on a written contract, the plaintiff cannot avoid a part of the contract on the ground of the defendants' fraud in making it.

ASSUMPSIT, on a policy of life insurance. The suit was entered at the February term, 1875, and continued to the September term, and then continued to the February term, 1876, when the defendants filed a petition for removal into the circuit court of the U. S. On account of other business entitled to precedence on the docket, the third term (when the petition was filed) was, in fact, the first term at which this cause could be tried. The court rejected the petition, and the defendants excepted.

The substance of one of the pleas is, that the promise declared upon was and is in writing, and upon the condition expressed therein, that the defendants should not be liable if the deceased should come to his death by reason of injuries occasioned to him while attempting to enter any public conveyance propelled by steam; while in motion, and that he was killed while attempting to enter such a conveyance in motion. The fifth replication to this plea is, that the defendants have waived said condition; and the sixth is, that the deceased was induced, by the deceit, misconduct, and fraud of the defendants, to believe that said condition was not relied upon by the defendants as a part of the contract. To these replications the defendants demur.

Hobbs, for the defendants.

Copeland, for the plaintiff.

SAWYER, J. I. Under the act of March 3, 1875, the petition for removal must be filed "before or at the term at which said cause