

CONE v. CONE.

Actual imprisonment in the state prison under a sentence for more than a year is a cause of divorce, not suspended by a bill of exceptions on which the conviction may be reversed.

LIBEL, for divorce. The cause alleged and proved was the defendant's actual imprisonment in the state prison, under a sentence for more than a year, for manslaughter. A bill of exceptions, for the reversal of the judgment, is pending. A divorce was decreed, and the defendant excepted.

Copeland and *Quarles*, for the defendant.

Hill, for the plaintiff.

DOE, C. J. The defendant's actual imprisonment under the judgment is a cause of divorce. The statute does not recognize the reversible character of such judgments as a reason for suspending their operation in proceedings for divorce. Gen. St., c. 163, s. 3.

Exception overruled.

BINGHAM, J., did not sit.

STATE v. TAPPAN.

An indictment, upon Gen. St., c. 259, s. 3, for attempting "to procure another to commit perjury," should, expressly or otherwise, allege the materiality of the testimony which the defendant solicited. The allegation of facts which show that the testimony probably was material, is not sufficient.

INDICTMENT, upon Gen. St., c. 259, s. 3, for attempting to procure certain persons to commit perjury. The indictment sets forth the testimony which the defendant is accused of attempting to procure, but does not expressly aver that it was material. The facts alleged show that it probably was, but not that it must have been, material. The defendant demurred.

Copeland, for the defendant, cited 8 Gratt. 629; *People v. Collier*, 1 Mich. 137; *State v. Norris*, 9 N. H. 96; *State v. Dodd*, 3 Murph. 226; *State v. Wall*, 9 Yerg. 347; *Hinch v. State*, 2 Mo. 158; *State v. Hayward*, 1 N. & McCord 546; *Weathers v. State*, 2 Blackf. 278;