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Notes on Recent Cases

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NOTES ON RECENT CASES

CRIMINAL LAW. Arguments and Conduct of Counsel. Argument of the prosecutor commenting on defendant's "lily white hands and pink cheeks", and urging his conviction in order to prevent "big old town boys like this defendant from going about over the country raping little country girls", *held* error, as inciting class prejudice. Also, in the same prosecution for rape, argument by prosecutor commenting on resort to law by prosecutrix's brother instead of shooting accused, *held* erroneous as inferring defendant's guilt. *Atkeison v. State* Tex. Cr. App. 273 S. W. 595.

CRIMINAL LAW. Argument to Jury. Where the State's attorney expressed his own individual opinion or belief of defendant's guilt, and told the jury that he and his associates would not ask them to send the defendant to the penitentiary if he and his associates were not positive of defendant's guilt, *held* such statements without being based on the evidence, is improper and prejudicial. *People v. Black.* Ill. 148 N. E. 281.

GOOD WILL. Ladies' hair bobbing is a branch of barber business, within covenant of seller of a barber shop not to engage in any branch of such business within a mile from such shop for five years; *barber* meaning one who makes a business of shaving and trimming beards and cutting and dressing hair. *Dellacorte v. Gentile.* (N. J. Ch.) 29 Atl. 739.

MASTER AND SERVANT. Contributory Negligence of Servant. Where an employee selected a ladder from defendant's stock room and the ladder was too short to reach a spout which deceased set forth to repair, as a consequence of which deceased leaned backward in an effort to reach the extending spout, lost his balance and seized a poorly insulated highly charged wire which deceased knew to be there, it was *held* that deceased was guilty of imprudence, contributing to the cause of the injury, and the employer's negligence in not sufficiently insulating the wire was not the proximate cause of the death. *Hoke v. Edison Light Co.* (Pa.) 130 Atl. 309.

MUNICIPAL CORPORATIONS. Zoning Ordinance. Un-

der an act of the State of New Jersey giving municipalities power to regulate and restrict location of buildings in order to promote the public health, safety and general welfare, the village of South Orange passed an ordinance which zoned property against apartment houses. A permit to build an apartment house having been refused, Ingersoll applied for a mandamus to compel issuance of a permit. The village tried to justify under stipulation that their fire-fighting facilities were inadequate and that sufficient firemen to handle a fire in said district were not obtainable. *Held,* a village has the duty to furnish its inhabitants with reasonably proper and adequate fire protection, and inadequacy of fire-fighting facilities to take care of apartment houses in a particular district is no justification for prohibition of such buildings by a zoning ordinance. *Ingersoll v. Village of South Orange et al.* (N. J.) 128 Atl. 393. [On the validity of such ordinances under the exercise of police power see *Ignacuinas v. Town of Nutley.* 125 Atl. 121, and *Sarg v. Hooper,* 128 Atl. 376. In the latter case it was *held* that the prohibition of a refreshment stand and gasoline tank, within a certain district where the erection of buildings for business purposes was restricted, is not within the police power to protect and preserve the public health, safety, and welfare of a municipality.]

NEGLIGENCE. Proximate Cause. An Automobile Owner Having Opportunity but Failing to Stop at a Safe Meeting Place in the Road, May be Guilty of Negligence Such as Constitutes Proximate Cause of Injury. A person, operating an automobile along a highway and observing a team approaching along a narrow strip of road where it would be difficult or impossible for both to pass in safety on account of a bank upon one side and a declivity upon the other side, having the opportunity but failing to stop at a wide and safe meeting-place to await the on-coming team was *held* to be negligent in the operation of the automobile; and where as a consequence of such negligent operation the driver of the approaching team is placed in an emergency and must act quickly and without determination for his own safety, and, when so attempting to avoid injury to himself he drives his team over the declivity and is thereby injured, the negligence of the person operating the automobile may be regarded as the proximate cause of the injury. *McAfee and Co. v. Martin.* (Ga.) 29 S. E. 168. —W. L. T.