THE NORTH CAROLINA STAR.

THOMAS J. LEMAY, Editor. NORTH CAROLINA—"Powerful in intellectual, moral and physical resources, the land of our sires and home of our affections." LEONIDAS B. LEMAY, Associate Editor.

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TO THE EDITORS OF THE NATIONAL INTELLIGENCER.

Messrs Editors: Your paper of this morning contains a portion of a speech of the honorable Mr. Badger of North Carolina, delivered in the Senate on the 19th instant, in which he comments upon some remarks lately made by me in the House of Representatives. The respect which (without any personal acquaintance) I have long entertained for this distinguished Senator would deter me from noticing any such misconstructions of my remarks as a candid mind might inadvertently commit; but the misrepresentations which the Sena or has made are so gratuitous and gross that I am constrained to notice them. I therefore ask the favor of a place in your paper, where he can answer me if he pleases, though he chose a place for his animadversions where he knew I could not answer him.

The following is a passage in his speech:

[Mr. Mann here quotes several paragraphs from Mr. Badger's speech for which see latter half of the 6th column of the 2d page of last Observer.—It is that part in which Mr. Badger comments on the following passage of Mr. Mann's speech:

"In conclusion, I have only to add, that such is my solemn and abiding conviction of the character of slavery, that, under a full sense of my responsibility to my country and my God, I deliberately say better disunion, better a civil or a servile war, better any thing that God in his providence shall send, than an extension of the bounds of slavery."]

By his own confession Mr. Badger had not read my speech. He takes up a single sentence therefore, for comment, without the issues of looking at the context. He is like the man who should declare that the Scriptures say "there is no God," when it is the fool, and not the Bible that makes the declaration. My speech discussed the question of extending slavery over our Territories, and the proposed Southern remedy for prohibiting that extension namely, the disunion of the States. The conclusion to which I came was that the North had better submit to the application of the Southern remedy than to surrender the new Territories to all the horrors of bondage. Beyond our present limits "no more slave Territories and no more slave States," was the exact ground I took But Mr. Badger represents me as saying that I would "prefer a disunion of these States," and all the other evils in his long and labored catalogue, "rather than the extension of slavery ONE FOOT;" "yes," he repeats with emphasis "ONE FOOT." Now, I never made such a declaration as this. never said any thing to give countenance or color to such a declaration. Many persons, seeing the statement of the honorable Senator and relying upon his character for fairness and veracity, have believed that I did. But he has led them into the error. My argument and conclusion had reference to new slave Territories or to a new slave Territory. Mr. Badger construes, or rather misconstrues this to mean "ONE FOOT." If my speech is fairly susceptible of this construction, I wish so far to retract it. He shall have my consent to a "ONE FOOT" Territory, and to as many slaves as he can hold on it under the *local law*.

Mr. Badger further charges me with invoking all the calamities he enumerates, "rather than permit one man who now stands upon the soil of North Carolina a slave to stand a slave upon the soil of New Mexico." This statement is not merely forced, but fabricated. Surely I said no such thing. I intimated nor hinted at, nor thought of such a thing.—There may be little choice whether any one man who now stands a slave," shall "stand a slave" in one place or in another, IF THAT BE ALL. In a national point of view, and looking at the subject as a statesman, the sentiment imputed to me is simply ridiculous.—But this wrongful imputation of such a sentiment without substance or semblance to justify it, is far worse than ridiculous: it becomes unjust and ungenerous; and is none the less so for being made in a place where he knew I could not repel it. The whole scope and stress of my argument went against yielding any such portion of our new acquisitions to slavery as would form either a State or a Territory. The eight or ten Southern Legislatures, the eight or ten Governors of Southern States, the Southern Senators and Representatives in Congress, and the confederates in getting up the Nashville Convention, have never, to my knowledge proposed a compromise on the platform of a "ONE FOOT" Territory, or expressed their readiness to spare the Union if "one man who stands a slave in North Carolina" is permitted to "stand a slave in New Mexico." When such an issue is brought forward seriously it will be met seriously But the real issue on this point is (and the Senator must know it) whether the victims of slavery shall be indefinitely multiplied by the addition to its domain of regions now free. That the creation of a new slave Territory will increase the victims of slavery is a proposition too plain to be argued. To deny this is to assert that if slavery had been confined to the State of Virginia or to the settlement at Jamestown where the first cargo of slaves was landed; the present number of slaves in this country would be no less than it now is; or in other words there would now be three millions of slaves within the limits of Virginia, or within the limits of Jamestown.

I have made this reply to the honorable Senator from North Carolina with great reluctance, and from no motive of personal unkindness. I have long been accustomed to regard his character with respect, and his opinions with deference; and I am happy in an opportunity to express a feeling of personal gratitude for his former endeavors to avert from the councils of the nation the subject-matter of this most lamentable contention.

Very truly, yours, &c.,
HORACE MANN.

WASHINGTON, March 23, 1850.

P. S. Another point in the honorable Senator's speech in which he attempts to vindicate the penal slave code of North Carolina and of the other Southern States from the taint of cupidity, may be safely left without comment to intelligent men. Every student of the CRIMINAL legislation of the Southern States in regard to slaves, knows that their laws are replete with proofs where the sensibilities of a man are sacrificed.

TO THE EDITORS OF THE NATIONAL INTELLIGENCER.

A communication in your paper of yesterday, from the Hon. Horace Mann, of the House of Representatives, seems to require a brief notice from me.

The honorable gentleman accuses me of having treated him with gross injustice in a recent speech, in which I referred to the closing paragraph of a speech of his, and made some comments thereupon.

Now in what consists the injustice? I quoted that paragraph from his speech, and he does not deny that it was quoted truly.—There is not a word or syllable attributed to him; not a word or syllable alleged or insinuated to have been spoken by him, except that paragraph, and that he admits was spoken and printed by him just as I quoted it. Then, is the statement of his language, I have done him no injustice.

In my comments, I gave "in other words"—in my own words—what I deemed a true interpretation of this; and, as I attributed to him no language which he did not use; as every thing to which he objects is, and upon the face of my remarks plainly purports to be, merely my own commentary upon the single quotation correctly taken from the gentleman's speech, it is very obvious that I have "fabricated" nothing. Whether the interpretation given to the honorable gentleman's language be correct or incorrect, a just carrying out it out to its true results, or an unfair exaggeration, intelligent men will be able to decide from the reading of my speech, which presents together both the text and commentary, and to them I am willing to leave it.

But the gentleman says that in his speech he "discussed the question of extending slavery over our territories," and that "no more slave Territories and no more slave States was the exact ground" he took. And what has that to do with the matter of his complaint against me? I referred not to his discussion or the grounds taken in it. I was not considering the course or validity of his reasoning, but he conclusion at which he arrived.—That was set down in his speech in these words:

"In conclusion, I have only to add, that such is my solemn and abiding conviction of the character of slavery that under a full sense of my responsibility to my country and my God, I deliberately say, better disunion—better a civil or a servile war—better any thing that God in his providence shall send, than an *extension of the bounds of slavery*."

Here is no reference to any particular degree, kind, or manner of extending slavery.—He speaks not of the "proposed or desired extention," or "extension into our Territories," or even of "THE extension," but he speaks of "an extension of the bounds of slavery," without a reference to any thing in his speech or elsewhere by which the generality of its language might be modified or explained. To refer, therefore, to the speech in order to understand the import of this general conclusion is idle. If the reasoning in the speech be particular, and the deduction general, there would be the logical defect of a conclusion too large for the premises, but the MEANING of the conclusion would remain, and the want of reasoning to support it would not abate a jot of its unmitigated and sweeping generality.

It is evident, then, that, whether supported by any reasoning, particular or general, the gentleman's conclusion remains, that disunion, civil war, servile war, with certain undefined judgments of Heaven besides, are preferable to "an extension of the bounds of slavery," but the indefinite article "an" is here exactly equivalent to "any;" and therefore, whatever amounts to "any extension" however small—a square mile, an acre, or foot—is strictly within the meaning of the language which he has thought proper deliberately to retain in his printed speech.

But I accept willingly the explanation now given of his meaning, and only regret that when writing out his speech, he did not then give the explanation which converts his general into a particular proposition. By this explanation I learn that, in his conclusion, he ment to speak not of any extension, however small, but of an extension of slavery in our Territories.

Then the gentleman's conclusion, as modified by himself, will be thus: "Better disunion," [the dissolution of our Government and destruction of the Union formed by our fathers;] "better a civil or a servile war," [the most disastrous, ferocious, and cruel of all wars;] "better any thing that God in his providence shall send," [for example pestilence and famine,] than an extension of the bounds of slavery over our Territories!

I cheerfully submit to all "intelligent men," if they are at the same time humane and patriotic, to pass upon such a sentiment. To his own intelligent, patriotic, and humane constituents, I submit it with entire confidence that it will not meet their approval, but, on the contrary, that they will regard the honorable gentleman as having been betrayed by the pervading excitement on the slavery question into an extravagant—I will not say fanatical—declaration which he is not able to defend, or willing as yet, to retract or qualify.

I had believed that the honorable gentleman had, under the exciting influence of discussion unconsciously done injustice to my own State, but a remark added to his communication would perhaps justify me if inclined to judge unkindly, in supposing that the wrong was wilful. But I am not so inclined, and draw no such conclusion. I infer, rather, that the bewildering excitement under which the speech was made has not yet passed away, but still continues to influence unfavorably the otherwise clear understanding and fair and upright purposes of the honorable gentleman.

GEO. E. BADGER.

From the Southern Christian Advocate.

ECCLESIASTICAL IN REFERENCE TO POLITICAL SEPARATION.

The division of the Methodist E. Church into two distinct ecclesiastical bodies, North and South, out of the old confederation of annual Conferences under one General Conference, has been regarded of late as an occurrence of sinister import in reference to the integrity of the political Union. It is known to every one that pointed and emphatic allusion has been made to it by most distinguished members of the Senate—the one from South Carolina the other Massachusetts—in two of the greatest speeches of the present Congress.—In one aspect of the case we are ready to grant that the sundering of religious bonds, and the exasperations which are apt to follow such an occurrence, seem to be the foreshadowings of similar disruptions in the social compact.—They indicate at least such a state of feeling on the part of large masses of our population as would render possible a disruption of political ties whenever a stern sense of duty might seem to warrant such an exigency. We have nevertheless, felt inclined to take a more hopeful view of the subject. The division of the Methodist Church grew out of the encroachments of the fanatical spirit of abolitionism breaking down and rushing over the compromise of the ecclesiastical constitution under which the Annual Conferences, North and South were united. Resistance was made on the part of the South, and had the great body of the Northern Church actually believed that there was danger of disruption; had they understood the true state of feeling at the South; and given the representatives of the Southern Conferences credit for honesty when they sounded the note of warning, it is likely they would have stood by the Constitution and held the ultraists in check. But unfortunately, it was impossible to convince the North that there was much danger The delusion prevailed that all this excitement and show of resistance was confined to Southern leaders who were far in advance of the home feeling of their constituents. It was said in influential quarters, among Northern men: "O you could not force the Southern Conferences out of the connection, if you really wished to get rid of them. Let these Hotspurs make their speeches and work off their steam; the people are safe enough for the integrity of the Church." And the world knows the result. The Southern Conferences did go, preachers and people, peaceably, since the plan of separation allowed them the privilege;—would have gone forcibly had no such provison been granted by the General Conference.

Now, this thing was not done in a corner. The whole country heard of it. The largest, firmest, most strongly banded of all the religious communions of the United States, was rent in twain. The world knows that abolitionism did it.—The world learned a lesson, at least they *might* have done so. This passage in ecclesiastical history afforded one pregnant illustration of Southern resistance to unconstitutional aggression. It proved there was firmness enough on the part of religious men at the South, to resist a degrading usurpation. And in this view of the subject the division of the Methodist Church will go far to save the political Union. What is it that now threatens the Union:—Every Southern man knows what it is. A pseudo-religious movement, with its plea of conscience overriding the Constitution, exulting in its avowed determinantion to sweep from the nation what it considers the deep disgrace of Southern institutions is making the impression upon the Northern mind that the Southern States can be forced into its measure. It gains strength and numbers in proportion to the spread of the delusive idea that there is no ground of apprehending resistance on the part of the South. The real danger lies precisely at this point. Encroachment after encroachment moves on and is sustained by the suffrage of Northern opinion ,lulled into fatal security by the idle dream of ultimate acquiescence on the part of the outvoted, feeble South. What shall keep these encroachments, from the very foundations of the Constitution? Oratory? Speeches in the Senate chamber, or on the floor of the hall of Representatives in Washington? If anything can do it, some telling demonstration of actual resistance to abolition digorganization must be relied on, some great fact, which says in plain language that the South clearly sees the limit beyond which no gratuities can or will be given to buy a peace from the aggressors in a hostile movement, and that Southern men will take their stand at that limit and maintain their rights to the last. The trial fell on the Southern Methodist Church, and she furnished the *experimentum crucis* The fragments of our ecclesiastical union have reared into a beacon, warning the whole country of danger. Deeply as the unity of the Church was cherished at the South, a sentiment and a passion nursed by recollections the most sacred, fostered by anticipations the most brilliant, it was laid on the altar of constitutional right ; it was given up by the Southern portion of the Church before they would, at the bidding of Northern masters, surrender their equality of right under guaranty of the Constitution; before they would submit to a usurpation without warrant from the word of God.

This example has been held up in the National Legislature to show, in Mr. Calhoun's language, "the explosive effect of slavery agitation." But the explosion was the result of resistance to aggression, and well may the North reflect upon the moral of the story.—The passage in Mr. Webster's speeches, which referred to the subject, stated emphatically that he had "never yet been able to come to the conclusion that there was ground for that separation." This remark, however illustrated by the drift of his subsequent remarks, evidently means that this great statesman saw no reason why the Northern Church should force their ultra sentiments on the disputed questions, upon their Southern brethren. He had the North in his eye when he said:—"There are men who with clear perceptions, as they think, of their own duty, do not see how too hot a pursuit of one duty may involve them in the violation of others, or how too warm an embracement of one truth may lead to a disregard of other truths equally important. As I heard it stated strongly, not many days ago, these are disposed to mount upon some duty as a war horse, and to drive furiously on and upon, and over all other duties that may stand in the way. There are men who in things of that sort are of opinion that human duties may be ascertained with the precision of mathematics. They deal with morals as with mathematics, and think what is right may be distinguished from what is wrong with the precision of an algebraic equation. They have, therefore, none too much charity towards others who differ from them. They are apt too, to think nothing is good but what is perfect, and that there are no compromises or modifications to be made in submission to differences of opinion or in deference to other men's judgment. If their perspicuity enables them to detect a spot on the face of the sun, they think that a good reason why the sun should be struck down from Heaven. They prefer the chance of running into utter darkness to living in heavenly light, if it be not absolutely without any imperfection."

This we hold to be a scathing rebuke to the fanatical one-idea-ultraism anti-slaveay excitement, a denouncement of the politico-religiousism which has done for the church what it is attempting to bring about in the State, a division, by trampling upon the constitutional rights of the Southern section of the Republic, by presenting new and impracticable issues, and by creating unwarrantable degrading terms of fraternization. If the Northern and Western Methodist papers can gather a crumb of comfort from this speech of Mr. Webster, in view of the pending law-suit, they are welcome to the satisfaction.

Perhaps an apology is due to our readers for the complexion of this article. As the conductors of a religious journal we abstain, on principle, from political discussions.—While the Northern church papers of every denomination teem with such articles at the present crisis, we are content to leave to statesmen and the great body of our citizenship the management of civil interests. Our foregoing remarks have been suggested by the reference made to Methodist affairs in the National legislature. We deplore the possibility of the breaking up of our national confederation; and for this reason we dread the triumph of fanatical abolitionism, which, sooner or later, must lead to the catastrophe. The mania, once it has full headway, will sweep like a land-slide over all the checks of law and religion, and bury in one common ruin the landmarks of the Constitution and the hopes of humanity.

COMMUNICATIONS.

For the Star.

MESSRS. EDITORS:—During the past month, it was a great pleasure to me, in passing through some five or six of our Western Counties, to learn the sentiments and wishes of a goodly number of Whig friends. They are wide, "wide awake" this time, and are determined never again, in an important election, to be "caught napping." I now speak of the people who do the voting—who work for their party because they believe, that, upon the success of the principles of *this party* depend the prosperity and happiness of the American people.

From observations I can say, with all candor, that our present excellent Governor, if renominated by the Convention, will *certainly* command the full strength of the Whig party. The prejudice which is said to exist in the West against Gov. Manly, you may rest assured *exists(!)* only in imagination. Why, this is the song of our opponents, up here, and is sung by them alone—not by Whigs. Is this surprising? Of course not.

Our friends are fully aware, that it was utterly impossible for Gov. M. to please every one in his selection of Commissioners to locate the Western Turnpike Road. True, there was some little dissatisfaction at first, (but this did not even bear the *shadow* of prejudice,) and, as I was informed upon undoubted authority, had it have matured would not have influenced one dozen votes,) which is now smoothed over, and as was to be expected from a magnanimous and charitable people all with *one* or *two* exceptions, are satisfied that the Governor had no whim of his own to gratify—that he wished only to do his duty.

Depend upon what I here say: Gov. Manly will receive a MUCH LARGER VOTE at the approaching election than he did two years before. I have heard of numbers who, at the last Gubernatorial election either voted *against* Gov. M. or did *not* vote at all, that are now eager for his re-nomination, they think he has been misrepresented, aye slandered, and desire to show, by giving him a large vote, that *their* confidence is strong, very strong. The nomination of no man, in my humble opinion, will give more general satisfaction throughout the whole State, than CHARLES MANLY, of Wake.

CATAWBA.

April, 1850.

For the Star.

Supreme Court, December Term, 1849.

THE STATE vs. GEORGE BOYETT.

When a man is indicted, under the Statute, for "knowingly *and fraudulently* voting at an election," when he is not qualified to vote, he cannot justify himself by shewing, that he was advised by a very respectable gentleman that he had a right to vote; for the maxim that "ignorance of the law excuses no man," applies as strongly to this case as to any other. The cases of the *State* v. *Dickens*, 1 Hay. 406 cited and approved.

Appeal from the Superior Court of Law of Johnston County, at the Fall Term 1839, his Honor Judge BATTLE presiding.

The defendant was indicted for voting, knowingly and fraudulently, at a constable's election, held for one of the captain's districts in the county of Johnston, in January 1849. On the trial, it was proved, that the defendant voted for constable in the district mentioned in the indictment, having been a resident in the said district for less than six months, immediately preceding the said election. It was also proved, that he did not mention the fact of his non-residence for six months to the inspectors of the polls of the said election, and that they did not know of such want of the requisite time of residence. The defendant offered to prove, that, before he gave his vote, he took the advice of a highly respectable and intelligent gentleman as to his right to vote; that the said gentleman advised that he had a right so to vote; and that he voted in consequence of such advice. The gentleman consulted was admitted not to be a gentleman of the bar.

The counsel for the defendant insisted, that the testimony was competent to show that he had not voted fraudulently, but in good faith.

The Court held, that the testimony was inadmissible, and that it would have been so, even if the gentleman, whose advice was taken by the defendant, had been a member of the bar: that the defendant was bound to know the constitution and laws of his country; and that ignorance of them in him and his advisers would not excuse, though it might be proper to be heard by the Court, after conviction, in mitigation of the punishment. The Court expressed the further opinion, that, if the defendant had voted in ignorance of a matter of fact, or had stated truly and fairly the facts of his case to the inspectors and they had decided in favor of his voting, then he could not be deemed guilty.

The defendant was convicted, fined six-pence and costs, and appealed.

Attorney General, for the State.

H. W. Miller, with whom was *J. H. Bryan*, for the defendant, submitted the following argument:

The words of the act of 1844–5 are, "If any person shall hereafter knowingly and fraudulently vote at any election, who by law shall not be entitled to vote at such election, he shall," &c. *Iredell's Man.* 91.

So far, it follows the language of the penal Statute, passed 1777, (*Rev. Stat Ch.* 52, *Sec.* 20,) against illegal voting, except that the words, "knowingly and fraudulently," are not in *that* act.

It is submitted, that the offence intended to be created by the Statute is the *fraudulent* voting at an election. There must not only be an *illegal* voting, but, coupled with it, a *fraudulent purpose* or *intent*.

If the Legislature meant to punish the *act* of voting, "not being entitled to vote" excluding all enquiry into the *intent*—the *motive* of the voter, why use the terms, "knowingly and fraudulently!" Its meaning could have been much more clearly expressed by adopting the words of the Penal Statute of 1777.

These words are *material*. Without them an indictment would not be good. 3 *Bacon's Abt.* 560, *Indt.*

If the *intent*—the *quo animo*, be not of the essence of the offence, then the defendant is shut out from *all* evidence, when it has been established, that he voted, "not being entitled to vote." But it is admitted that he can shew a mistake in matters of *fact*, as that he voted under a deed calling for fifty acres, when there was a less number—or that he was mistaken in his age. What is the object of such evidence, if not to explain the *intent* of the voter? But if the intent is of no importance, and the offence was complete when the illegal vote was given, no matter what the motive, then *such* evidence would be wholly irrelevant.

Let it be conceded, that the case is made out against the defendant, when it is proved that he voted "not being entitled to vote," still, is he precluded from shewing, that he voted under an honest, a *bona fide* belief that he had a right to vote?

The maxim, "*ignorantia juris non excusat*," does not apply to offences created by Statute, where the intent—the *quo animo*, is a proper inquiry for the jury. But if it applies at all, then, it is submitted, it does not extend to mistakes and ignorance of collateral questions of law, such for instance as questions of title—the legal effect of deeds and wills—the validity of the probate of such, writings, &c.

The evidence offered in this case was not intended to show ignorance or mistake of the law *creating the offence*, but assuming that he knew the provisions of the Act of 1844–5, it was offered to show that he sought information as to his right to vote, and that, acting under this information, although he voted, "not being entitled to vote," yet he did not thus vote "*knowingly and fraudulently*." Of course it would be for the jury to say whether the information was sought for, and acted upon, in good faith.

The Court has decided that the deed of a *feme covert* whose private examination has been irregularly taken, is void. Would a defendant indicted for voting in the Senate be precluded from showing such a deed in evidence, in connection with the fact that he had often voted under it before? Would evidence going to show that he had at a previous election exhibited the deed to the Poll holders, and they had permitted him to vote under it, be excluded?

This Court has repeatedly decided that a sale under a *fi. fa.* bearing test after the death of the defendant therein, his heirs not having been made parties, is void, and the purchaser acquires no title. Would the sheriff's deed in such a case, with evidence of possession under it for years, be rejected when offered in behalf of a defendant, indicted for a vote cast under such a deed?

Other cases could be put, going to show that the exclusion of evidence of a *bona fide* mistake or ignorance of the qualifications of voters would give the Act of 1844-5 a severity, which was not intended by the Legislature.

Some such cases might be drawn from the opinions and practice, which prevailed amongst the most enlightened men of the State in reference to the rights to vote as between grantor, trustee, and *cestuis que trust*, especially before the able opinion of this Court, (delivered by the Chief Justice) under a request from the Senate, at the last session of the Legislature.

Had the Senate, in the case of the contested election, which was before them, decided the questions of law for itself, and passed a Resolution that in its opinion, the trustee alone was entiled to vote, would such a trustee thus voting, and indicted under the Act of '44–5, be excluded from evidence, showing, that immediately before his vote was cast, that resolution was read to him from the Journal of the Senate?

Would it avail a defendant nothing to shew, that, being illiterate, he asked one of the Poll holders, when not acting in his official capacity, to read the law, defining the qualifications of voters; and he read it purposely *wrong*, by which he was deceived and led to cast an illegal vote?

It is conceded by the State, that had the defendant submitted the question of his qualification to the Poll holders, and they had passed upon it officially, and allowed him to vote, this would have excused him, *because* their decision is *final*. It is submitted, that is not the reason why their decision can be given in evidence: but that it is admissible to shew the *intent* of the voter: for if it were otherwise, and so contended *Or*, then the most flagrant frauds upon the ballot box would go unpunished—the most cunning imposition upon the Poll holders could be practiced with impunity, provided a favorable opinion be obtained from them, acting in their *quasi* judicial capacity.

But there are analogous principles of law, which may serve us.

In *perjury* it is necessary to aver and prove, that the oath was taken "*wilfully* and *corruptly*, for if done from inadvertence or mistake, it cannot amount to voluntary or corrupt perjury *Arch. Crim. Law*, 428.

B. is indicted for stealing a horse of A.—It being necessary to prove property in A., he is examined for that purpose. Subsequently he is indicted for perjury. Would evidence, shewing that he was mistaken in the legal effects of a deed under which he claimed the property, be rejected? Would the deed itself, though *void* or of no legal effect, be excluded?

A defendant is arrested under a *ca. sa.*, files a schedule and swears to it. He is indicted under the 17th Section of the Act for the relief of Insolvent Debtors. *Rev. Stat ch* 58. The State proves that he left out of the schedule certain property which came by his wife: would the defendant be precluded from exhibiting in evidence a marriage settlement, which appears to be void as against creditors, under the decision of this Court in the case of *Smith* v. *Castrix*, 5 Ire. 518. Would the Court reject such evidence when offered to shew, that the oath was not taken "wilfully and corruptly?"

The principles laid down in the case of *Saunders* v. *Smallwood*, 8 Ire. 125, may afford some aid under this view of the case. That was an action of debt on a bond, and a plea of a certificate of bankruptcy to the defendant, as a voluntary bankrupt. The plaintiff replied, that, at the time the defendant exhibited his petition in pankruptcy, he was seized of certain property which he did not set forth in the petition or any inventory annexed, *but fraudulently concealed the same, &c.* The case was brought up to this Court upon facts agreed, from which it appeared, that, before the marriage of the defendant, there was a settlement of property on his wife, which was proved before the Clerk of the County Court and on that account void against the husband's creditors. It was contended for the plaintiff, that the defendant was presumed to know the legal effect of the probate of the deed, and ignorance of the law did not excuse him. In delivering the opinion of the Court, his Honor, (the Chief Justice,) after declaring the deeds void in law against the defendant's creditor's, says: "But admitting the property to have been in the defendant for the benefit of his creditors, it is not the necessary consequence, that his certificate of bankruptcy can be impeached and avoided, for the omission to insert that property in his inventory, or otherwise disclose it to the Court sitting in Bankruptcy. For such omission *may have been innocent, as the defendant might not have been aware of the legal insufficiency of the probate*, or indeed might have known how, in point of fact, the deed was proved, and the act of Congress does not invalidate the discharge for every omission of property, but only *for some fraud or wilful concealment of property*," &c.

To constitute *larceny* the taking must be *felonious*. It is the peculiar province of the jury to decide upon the *intention* of one charged with larceny. 2 *Star*, 827.

"It is a good defence in larceny to shew that the taking was *bona fide*, under a supposed claim of right, *however unfounded such claim may be*." 2 *Starkie* 828.

Under this principle the Court would not reject evidence "of claim of right," founded upon a deed void in law, but which the defendant had been advised was good and gave him a valid title. Such proof would go to repel the *animus furandi*.

It is submitted in conclusion, and with due deference, that the effect of the principle laid down by the learned judge below, is to strike out from the statute the words *knowingly and fraudulently*, and thereby to place mistake and fraud, misjudgment and villainy, on the same footing. Such was not the intention of the Legislature. It had already provided a penalty against *illegal* voting, whatever the *intent* of the voter. This was an ample provision against voting "not being entitled to vote," where the purpose was honest; but it was not sufficient punishment where the object of the voter was fraudulent and corrupt. This defect the Act of 1844-5 was intended to supply.

To place the construction contended for on this Act, would not diminish the number of fraudulent and dishonest voters—whilst it would drive from the polls many upright men, who, though told by the best advisers that they are legally entitled to vote, will forego the privilege, before they will run the risk of an indictment under this Statute.

PEARSON, J. "*Ignorantia legis neminem excusat*." Every one competent to act for himself is presumed to know the law. No one is allowed to excuse himself by pleading ignorance. Courts are compelled to act upon this rule, as well in criminal as civil matters. It lies at the foundation of the administration of justice. And there is no telling to what exient, if admissible, the plea of ignorance would be carried, or the degree of embarassement, that would be introduced into every trial, by conflicting evidence upon the question of ignorance.

In civil matters, it is admitted, the presumption is frequently not in accordance with the truth. The sales of property are complicated systems—the result, "not of the reason of any one man, but of many men put together:" hence, they are not often understood, and more frequently not properly applied, and the presumption can only be justified upon the ground of necessity.

But in criminal matters, the presumption most usually accords with the truth. As to such as are *mala in se*, every one who has an innate sense of right and wrong, which enables him to know when he violates the law, and it is of no consequence, if he be not able to give the name, by which the offence is known in the law books, or to point out the nice distinctions between the different grades of offence. As to such as are "*mala prohibita*," they depend upon statutes printed and published and put within the reach of every one; so that no one has a right to complain, if a presumption, necessary to the administration of the law, is applied to him. To allow ignorance as an excuse would be to offer a reward to the ignorant.

The defendant voted, when by law he was not entitled to vote. He is presumed to know the law. Hence, he voted, knowing that he had no right to vote, and, acting with this knowledge, he necessarily committed a fraud upon the public—in the words of the Act, he *knowingly* and *fraudulently* voted when he was not entitled to vote. It being proved on the part of the State that he voted, not having resided within the bounds of the company for six months next preceding the election, a case was made against him.

He offered to prove, for the purpose of rebutting the inference of fraud, that he had stated the facts to a respectable gentleman, who advised him that he had a right to vote. His Honor held the testimony inadmissable. We concur in that opinion. The evidence had no tendency to rebut the inference of fraud, for the inference was made from his presumed knowledge of the law, and that presumption could not be met by any such proof, without introducing all the evils, which the rule was intended to avoid. The question, in effect, was: shall a man be allowed, in excuse of a violation of the law, to prove, that, he was ignorant of the very law, under which he professed to act, and under which he claimed the privilege of voting? If he was not ignorant of the law, and that he cannot be heard to allege, then, he voted *knowingly*, and, by necessary inference, *fraudulently*.

An indictment for extortion charges, that the defendant received the fee "unlawfully, *corruptly, deceitfully* and extorsively."—This averment the State must prove. It is done by showing, that the defendant received what the law does not allow him to take: for, the presumption is, "he knew the law upon the subject of fees to be taken by himself," and the inference from such knowledge is, that he acted "corruptly and deceitfully," (words quite as strong as knowingly and fraudulently,) unless it is shown, that he did so by some inadvertence, or mistake in calculation. He cannot excuse himself for taking more than the legal fee, by saying, that he was misled by the advice of an attorney. If such or the like excuses were admitted, it would hardly ever be possible to convict. He might always contrive to ground his conduct upon misapprehension or improper advice. *State* v. *Dickens*, 1. Hay. 406.

It would be a different question, if the defendant had stated the facts to the judges of the election, and they had decided in favor of his right to vote, for their decision would rebut the presumption of knowledge on his part, in a manner contemplated by law.

The case was ably argued for the defendant. It was insisted, that it was necessary for the State to aver and prove, that the defendant voted knowingly and fraudulently. That position is admitted. The reply is, that the averment was made and was proved; for, proof being made that he voted when he was not entitled to vote, the presumption is, that he knew the law, and *fraud* is the necessary inference, as corruption and deceit were in the case above cited. It cannot be contended, that to fix him with knowledge, the State must shew, that some one read and explained the law to him; or to fix him with fraud, that it must be proven, he had been bribed. If so, the Statute is a dead letter.

Our attention was called to the fact, that the act of 1844, making the offence indictable, uses these words, "knowingly and fraudulently," which words are not in the Act of 1777, imposing a penalty.

To incurr the penalty under the Act of 1777, the voting must be unlawful, and it must be done knowingly and fraudulently in the sense above explained. If one, having a deed for fifty acres of land, votes in the Senate, and it turns out that the deed only contained forty-nine acres, the penalty is not incurred, unless he knew the fact at the time he voted. So, if one votes for a constable, and it turns out that the dividing line includes him in another company, the penalty is not incurred, unless he knew the fact or believed that the true line put him in the other company. There is not in either case that criminal intent, which is a necessary ingredient of the offence, whether it be punished by a penalty or by indictment. The Act of 1844 expresses in so many words what the law would have implied. It is a strained inference, that by so doing, the Legislature intended to make the case of illegal voting an "*exception*," and to take it out of the rule "*ignorantia legis*," a rule which has always been acted upon in our law and in the laws of every nation, of which we have any knowledge, and without which, in fact, the law cannot be administered. The inference sought to be made results in this—the Legislature did not intend the Act of 1844 to be carried into effect—it was intended to be "*brutum fulmen*." No reason has been suggested for making an exception in this case. The only additional qualification, to that of a voter for a member of the House of Commons, is a residence of six months in the captain's company. This was not complicated or difficult to be understood. Why make the exception and offer a reward for ignorance in this particular case? Such a construction cannot be admitted, unless the law makers had declared their intention by positive enactment.

PER CURIAM There is no error in the Court below and the same must be so certified.

For the Star.

MESSRS. EDITORS:—We believe that it is the duty of all good citizens to unite with all their hearts, in urging the friends of this glorious Union, not to say, not to do any thing that would in the least degree dim one single Star in our glorious National Banner, lest we should have some agency in bringing our now happy Nation into bad repute; and we would not touch this subject at this time, were it not that there are sentiments advanced from those in high places, which, if carried out or are suffered to spread, will be well calculated to hazard the stability of this glorious Union; and the doctrine which they are now inculcating, they would have all believe, is from a source higher than the Constitution and the oaths which they take to carry it out; an I they contend that they derive those higher powers and principles from the divine fountain of light, the scriptures. Such men can and will make this doctrine mean anything and everything to suit their prejudices, and have caused this very principle to bear, when they want it, against the Bible itself, and its divine authority lending the very element to assist in driving that blessed book from the Common Schools of one entire State, and at other times will lend their aid to a single religious sect, for sectarian purposes, to contend for their proportion of the same Common School fund to educate their children in their own belief, altho very many think that their education is not friendly nor beneficial to free republics. Altho we cannot blame them, to get all they can to educate their children in their own way; yet they had no more right to expect it, than had each one of all the other sects, to their respective portion of this same fund; but through the influence of this same higher power means they were but too successful; and if this same principle is brought to bear against our Laws and Constitution, what security can we have for our now happy Union!

Again, this detestable, pernicious "higher power" is brought to bear against the entire property of the South; and they contend that such property shall not be given up, except by trial by Jury, when they know that this is equivalent to giving it up altogether, for independent of the immense trouble it would give the owners, it will cost them frequently, three times the worth of the property to secure it.—This they know. Hence the wickedness for contending for it. Thus these "higher power" people will not only stab the laws and the Constitution, but the laws of God, by causing the poor Slave, when pursued by his master and overa-