

1914

## A Treatise on Attorneys-at-Law

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conduct of the plaintiff involved no wrongful act but that he merely yielded to the paramount title of the city. In New York the rule is well settled that a wrongful eviction from the whole or any part of premises suspends the rent and prevents the landlord from ejecting the tenant for such non payment; see *Edgerton v. Page*, 20 N. Y. 283, *Christopher v. Austin*, 11 N. Y. 218, *Hamilton v. Graybill*, 19 Misc. 521 and cases cited at bottom page 523. This is in accord with the great weight of authority. See cases collected in *Am. & Eng. Ency. Law*, p. 298; Alabama in case of *Roll v. Howell* (62 So. 463), allows no recovery where tenant relinquishes the premises after a partial eviction. But if tenant still remains, a quantum meruit lies against him, see *Am. & Eng. Ency. Law*, p. 299. The case of *Duhain v. Mermod, Jaccard & King Jewelry Co.*, supra, seems not to be at variance with the great weight of authority holding that a partial eviction under a paramount title is not such an eviction as suspends rent, but that the tenant remains liable for the payment of such proportion as the part which he occupies bears to the whole, see cases collected *Am. & Eng. Ency. Law*, p. 299. In the *Duhain* case, supra, no such apportionment was demanded, but the Court in dictum says it would be granted. Also since the facts show no loss to the tenant but in reality a benefit, the case is undoubtedly sound.

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#### LAW BOOK REVIEWS.

A TREATISE ON ATTORNEYS-AT-LAW, by Edward M. Thornton (two vols.; Edward Thompson Company).

According to the publisher's foreword, this is a posthumous work. While the title-page bears only the name of Mr. Thornton, his death, before the last chapter was finished, necessitated its completion and revision by Mr. Hiram Thomas, lately, we believe, an associate editor of our contemporary, "Bench and Bar."

There has long been need of a new work on the law of attorneys. Mr. Week's standard treatise has suffered by the lapse of time. Since the publication of its second edition in 1892, there has been a marked increase in the number of cases defining the right and duties of attorneys.

The two volumes by Mr. Thornton contain a clear, and, as a rule, very satisfactory exposition of the law relating to attorneys, at common law, under legislative enactments and under court rules. That even so unyielding a subject as this is not ungraced by humor,

is admirably illustrated by the paragraphs (§40) treating of "Non-légál Arguments for and against Admission" of women to the bar. Particularly commendable, however, is the inclusion of foot-notes, which deal in detail with the law of New York without detracting from the usefulness of the book to practitioners in other states. Many of these notes (*e. g.*, pp. 76 and 1295) evidence a closer familiarity with the substantive and adjective law of New York than can be gleaned from a mere study of precedents, and indicate that Mr. Thornton's work is certain to gain recognition as a valuable aid to the members of the local bar.

It is too much, perhaps, to expect a work of such length as this to be barren of error. Hence, it is not surprising to find in it an occasional statement that is open to criticism. Thus, it is said (§852) that in this state a "disbarment proceeding is *quasi*-criminal in its character." Apparently, *In Matter of Randell*, 158 N. Y. 216, 219 (1899), where this doctrine was repudiated by the Court of Appeals, has been overlooked.

Again, we cannot concur in the opinion (§890) that in New York "depositions are not admissible over objection in disbarment proceedings." Nor, it is submitted, do the cases cited, *Matter of Eldridge*, 82 N. Y. 161 (1890), and *Matter of an Attorney*, 83 N. Y. 164 (1880), support the author's view. The former case is but an authority for the proposition that, upon the trial of a disbarment proceeding, the common law rules of evidence may not be disregarded—a rule subject to the limitation, of course, that they may be abrogated by the legislature. (*Howard v. Moot*, 64 N. Y. 262 (1876)). The other case merely holds that a disbarment proceeding is not an action within the meaning of a statute permitting the issuance of a commission in an action.

At the present day, a commission may be issued either in an action or in a special proceeding (*Code Civ. Proc.* §888). And so, in the disbarment proceeding of *In Matter of Spencer*, 137 App. Div. 330, 122 N. Y. Supp. 190 (1910), the court ordered a commission to take the testimony of a witness residing in Paris, despite vigorous opposition by the respondent.

While undoubtedly important, these errors prove, not that Mr. Thornton has written unwisely, but that "to err is human."

