

## The Legal News.

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The danger which may lie in a name was illustrated by the case of *Milwaukee Malt Extract Co. v. Chicago, etc. Co.* The plaintiffs manufactured an article which they called "New Era Beer," and they wished to have a consignment of it carried into the State of Iowa. The transportation of intoxicating liquors into that State being prohibited, the defendants refused to carry it. The plaintiffs, alleging that their fluid was not intoxicating, applied for a writ of *Mandamus* to compel the defendants to perform their duty as common carriers. The Supreme Court of Iowa decided against the plaintiffs, holding that as they called their manufacture "New Era Beer," the presumption was that it really was beer, and the Statute law of Iowa declared that beer was an intoxicating liquor. "The words 'New Era' added to the word 'beer' (observed the Court) indicated nothing as to the character of the product. Suppose the plaintiffs had tendered to the defendants, for transportation, any article denominated simply 'brandy;' would the plaintiffs be entitled to maintain their action for *mandamus* to compel the defendants to receive the article, upon an allegation that it was a new kind of brandy which had no intoxicating quality? We think not. The defendants would discover by the name that the article is apparently prohibited, and could not determine otherwise without resorting to chemical analysis, or some other kind of evidence. The determination would call for the exercise of a discretion as to what evidence should be resorted to, and what should be deemed satisfactory. Where an act is to be performed or omitted in the discretion of a party, the performance cannot be enforced by an order of *mandamus*. In High, Extr. Rem. the author says: 'Stated in general terms, the principle is that *mandamus* will lie to compel the performance of duties purely ministerial in their nature, and so clear and specific that no element of discretion is

left in their performance, but that, as to all acts or duties, necessarily calling for the exercise of judgment or discretion, upon the part of the officer or body, at whose hands their performance is required, *mandamus* will not lie. The fact, then, that the product in question is not intoxicating, does not, in our opinion, give a right to this action. From the name of the product the defendant had a right to infer that the transportation was prohibited, and we think it was not bound at its peril to correctly analyze the product, or determine otherwise that it was not in fact intoxicating. We think that the demurrer was properly sustained." ●

The London *Lancet* does not share the opinion recently put forward by some morbid philanthropists, that hanging is a barbarous method of extinguishing the life of persons who are condemned to death. It says: "At length it is beginning to be recognized in France that the brain of a decapitated criminal lives, and consciousness is maintained for an appreciable time, which to the victim may seem an age, after death—an opinion we strongly expressed many years ago. This ghastly fact, as we have no doubt it is, being perceived, it is beginning to be felt that executions cannot any longer be carried out by the guillotine. Prussic acid is now proposed. If instantaneous death be desired, this is clearly inadmissible. The period taken to terminate life by poison of any kind must needs vary greatly with the individual. In not a small proportion of instances we fancy death by prussic acid would be considerably protracted, and, although long dying is not so horrible as living after death, so to say, yet it is strongly opposed to the interests of humanity to protract the agony of a fellow creature dying by the hand of justice. Electricity is another agent suggested. We doubt the possibility of applying this agent so as to destroy life instantly. We confess that, looking at the matter all round, we incline to think that hanging, when properly performed, destroys consciousness more rapidly, and prevents its return more effectually than any other mode of death which justice can employ. It is against the bungling way of hanging we