

HUMOROUS PHASES OF THE LAW.

fication in the case of *Christy v. Murphy*, 12 How. 77. The plaintiff organized and established, in 1842, a band of performers of negro minstrelsy, and named it after himself, "Christy's Minstrels." He was the first who established this species of entertainment. When he commenced it he incurred some expenditure of time, labour, and money, and continued it successfully until 1854, when he suspended it and went to California. In his absence the defendants, most of whom had been employed by him in his band as performers for hire, assumed the style and name of "Christy's Minstrels." The plaintiff, desiring to re-instate his own band under that name, prayed an injunction against this conduct of the defendants, and it was granted. Judge Clerke, who gave the opinion of the court, and who seems a wise and merry Clerke, such as would have rejoiced the heart of Chaucer, utters some very sensible legal, hygienic and ethical observations. He says: "'Man does not live by bread alone;' the complete enjoyment, even of his physical existence, does not depend upon mere food or raiment or other material substances, but upon the exercise of the various and numerous moral and mental faculties with which God has endowed us. It may be as necessary to laugh as to eat; and I am persuaded, if people *would eat less and laugh more*, that their moral as well as physical well-being would be materially improved. The gravest of poets sings:

'The love of pleasure is man's eldest born;
Wisdom, her younger sister, though more grave,
Was meant to minister, and not to mar
Imperial pleasure, queen of human hearts.'

And the judge concludes that the entertainment afforded by Mr. Christy deserves the protection of the court against fraudulent imitations, and that, in the use of his name, the defendants must "keep dark."

Can a picture become a trade-mark? It was doubted by the Supreme Court of California, in *Falkinburgh v. Lucy*, 35 Cal. 52. Judge Sanderson, in that case, shows a keen sense of the humorous in his description of the picture in question. He says: "The plaintiff's label has a highly-coloured picture, representing a washing-room, with tubs, baskets, clothes-lines, &c. There are two tubs painted yellow, at each of which stands a female of remarkably muscular development, with

arms uncovered, and clad in a red dress, which is tucked up at the sides, exposing to view a red petticoat with three black stripes running around it near the lower extremity. Each is apparently actively engaged in washing, and clouds of steam are gracefully rolling up from the tubs, and dispersing along the ceiling. In the back-ground is extended across the room a clothes-line, upon which are suspended stockings and other under-garments, which have evidently just been put to use in testing the cleansing properties of the plaintiff's washing powder. To the left of the washerwoman stands a lady in a yellow bonnet, red dress, green congress gaiters, and hoops of ample circumference; upon her left arm is suspended a yellow basket, and in her left hand is held a red parasol; while the other hand, which is encased in a green glove, is gracefully extended toward the nearest washerwoman in an attitude of earnest entreaty. In the immediate foreground is a yellow and green clothes-basket, full of dirty linen, and a yellow and green soap packing-box, upon which are printed, in small capitals, the words, 'Standard Co.'s Soap.' Each wash-tub is supported by a four-legged stool—some of the legs being yellow, some red, some green, and some all three. The floor of the room, as to colour, is in part of a yellowish green, and in part of a greenish red, while the walls are of a grayish blue. This is but an imperfect description of the picture with which the plaintiff's label is adorned. The design is good, for it is eminently suggestive of the plaintiff's goods." The judge has a good eye for colour, it seems, and might make himself very useful in writing descriptions for the religious newspapers, of the "chromos" which they are so much in the habit of offering as inducements to subscribers. But we have never seen why a picture may not be made as good a trade-mark as anything else under Lord Langdale's rule.

However this may be, it would doubtless be conceded that an artist's or engraver's device placed upon a picture by way of trade-mark, would be protected against imitation. Thus, the letters A. D., in the form of a monogram, the well-known device of Albert Durer, could not lawfully be adopted by another engraver of a different name, although he should place after the letters the year of grace in