

HUMOROUS PHASES OF THE LAW.

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TRADE-MARKS.

One of the most fertile subjects of conversation in the commercial world is the rascality of lawyers. To hear the unanimous opinion of tradesmen, one would infer that, among the latter, at least, there was no such thing as cheating one another; that such is the purity of the atmosphere of trade, that no merchant ever contrives to filch away another's customers, and that one's ownership of his own is universally respected. In spite of the bad odour in which we are held by the mercantile world, we do not remember of ever hearing ourselves accused of stealing one another's signs, or forging one another's handwriting, or resorting to any other mean device to get business that does not belong to us. We fear that so much cannot be said of our critics. Here is an entire branch of the law devoted to the subject of the protection of merchants against the piracy of their fellows. One merchant imitates the peculiar commodity or invention of another; the law says he must not do this, and gives the latter the privilege of affixing a peculiar mark upon it to denote his proprietorship; the other then steals the mark, too, and the law then punishes the latter infraction. All this not only furnishes inevitable employment to those unprincipled lawyers, of whom we started out to speak, but gives rise to a vast amount of metaphysical and abstruse law learning. Out of this we propose to extract any alleviating phases of humour that may not be altogether patent, although the subject of investigation may be.

The poets have differed in their estimates of the importance of a name. One asks, "What's in a name? that which we call a rose by any other name would smell as sweet;" and another talks about "the magic of a name." But the experience of practical men has demonstrated that Campbell is right. The success of a book, a play, a commodity, is very dependent upon its name, and the success of men themselves is frequently hindered by a ridiculous or common-place name. The only man with a common name who achieved fame, according to our recollection, was John Brown, and even he would not, had it not been for the fortunate

circumstances of his failing in his enterprise and being hanged. The modern novelists have recognized "the magic of a name," and have named their offspring in a way to excite curiosity and surmise. Frequently their productions are named without any regard to appropriateness. Thus, "Cometh up as a Flower," so suggestive of the frailty of human existence, and which has accordingly been bought by all the pious persons in the land, turns out to be a very nasty tale of attempted seduction. "Ruskin on Types," it is said, was once inquired for by a printer, and John Hill Burton tells a story of a sheep-breeder who went to a hardware store to buy a "hydraulic ram" for the improvement of his flock. But we are straying from our subject.

It was formerly said that a trade-mark, to be entitled to judicial protection, must in itself indicate the origin or ownership of the article to which it belongs. This idea has been very materially modified by modern decisions. The rule is well stated by Lord Langdale in *Perry v. Truefitt*, 6 Beav. 56: "A man may mark his own manufacture, either by his name or by using for the purpose any symbol or emblem, however unmeaning in itself; and if such symbol or emblem comes by use to be recognized in trade as the mark of the goods of a peculiar person, no other trader has a right to stamp it upon his goods of a similar description." As an illustration, the words "Congress water" do not indicate either origin or ownership, for the water is a natural product, and no one would, for a moment, conceive our members of Congress as having any interest in such a subject; and yet the phrase has been held a valid trade-mark. So much the law concedes to a natural beverage described by a "fancy name." But artificial beverages are viewed with less complacency, and "Schiedam Schnapps" may be made and sold by any one. So it was held in *Wolfe v. Burke*, 7 Lans. 151, and although Mr. Wolfe was the first to introduce this delicate article of alcoholic stimulant to the American palate, yet any one may keep the wolf from his door by manufacturing and vending it.

It is a well-settled principle that a colourable imitation of one's trade-mark or designation will be restrained by a court of equity. This received exempli-