Leggott v. *Barrett*, "prevent the customers from having the liberty which anybody in the country might have, of dealing with whom they liked." The rule, as to the proper mode of carrying on business by one who has previously sold a similar business, being now restored to what it was before the recent decisions of the Master of the Rolls, will doubtless be always in practice found sufficiently stringent to prevent any fraudulent use being made of those business advantages, which the very purpose of the previous sale had been to part with, and make the property of another.—London *Law Times*.

RECENT U. S. DECISIONS.

Mandamus—Will not issue if result fruitless.—Mandamus will not issue, even if the facts would warrant its issue otherwise, if the result will be fruitless. Says Brown: "It is a maxim of our legal authors, as well as a dictate of common sense, that the law will not itself attempt to do an act which would be vain; *lex nil frustra facit*, nor to enforce one which would be frivolous—*lex neminem cogit ad vana seu inutilia*." The law will not, in the language of the old reports, enforce any one to do a thing which will be vain and fruitless.—*Clark* v. *Crane*, California Supreme Court.

Malicious Prosecution—What necessary to sustain action—Probable cause.—In order to maintain the action for malicious prosecution, it is incumbent on the plaintiff to show that he had been prosecuted by or at the instigation of the defendant, and that such prosecution was instituted maliciously and without probable cause. These ingredients are essential to the right of action, and if they are not found to co-exist, the action is not maintainable. While the malice necessary to the right of recovery may not be deduced as a necessary legal conclusion from a mere act, irrespective of the motive with which the act was done, yet any motive other than that of instituting the prosecution for the purpose of bringing the party to justice is a malicious motive on the part of the person who acts under the influence of it. Mitchell v. Jenkins, 5 B. & Ad. 594; Add. on Torts, 594, 613; 2 Greenl. on Ev., § 453; Boyd v. Cross, 35 Md. 194; Cooper v. Utterbach, 37 id. 283; Stansbury v. Fogle, id. 386; 1 Tayl. on Ev. 40. Probable cause is made to depend upon knowledge of facts and circumstances which were sufficient to induce the defendant or any reasonable person to believe the truth of the accusation made against the plaintiff, and that such knowledge and belief existed in the mind of the defendant at the time the charge was made or being prosecuted, and were in good faith the reason and inducement for his putting the law in motion. Mere belief that cause existed, however sincere that belief may have been, is not sufficient. Delegal v. Highley, 3 Bing. N. C. 950; McWilliams v. Hoban, 42 Md. 57; 2 Greenl. on Ev., § 455; Perryman v. Lister, L. R., 3 Exch. 197; S. C., L. R., 4 H. L. 521; Merriam v. Mitchell, 13 Me. 439.—*Johns* v. *Marsh*.—Maryland Court of Appeals, 52 Maryland Rep.

PROFESSIONAL ETHICS.

To the Editor of the LEGAL NEWS:

SIR,—The delicacy which prevents an advocate from pleading in the court of a near relative is doubtless "honorable" in a sense; but it also indicates a certain moral timidity. It is hardly possible to conceive that a judge should be swayed one way or other by the person who urges the argument. In the multitude of affairs that comes before a judge it generally happens that the judge does not recollect who the pleader was. In England where the habit of suspicion has not yet become a national vice, such instances as those mentioned in the Albany *Law Journal* would be regarded as affectations. The rule in England goes no further than this, that a barrister shall not select his father's circuit for practice. To lay it down as a rule that a lawyer is not to practice in the court in which his father is a judge would be to decree that the son of a judge shall not be a lawyer.

R.

GENERAL NOTES.

It is stated that Sophie Perofskaja, who was one of the recently executed Nihilists, was the first woman who has been executed in the Czar's dominions since 1791, in which year a governess named Mary Hamilton had her head publicly cut off at St. Petersburg, for having made away with her three illegitimate children. Twenty-five years after that event, Elizabeth, daughter of Peter the Great, abolished the punishment of death, and it has never been reintroduced into the Russian criminal code. Hence, when anyone commits a crime of extraordinary atrocity in Russia, in order that the death punishment may be awarded, the criminal must be tried by a military tribunal or by a special high court of justice.