

CIRCUIT COURT.

MONTREAL, October 1, 1883.

Before MATHIEU, J.

THE MONTREAL PRINTING CO. v. IVES.

Advertising contract—Circulation.

The plaintiff sued for a sum of \$50 alleged to be due for the insertion and circulation of the defendant's advertisement in their publication called the "Farmer's Almanac," in virtue of a contract in the following terms:—

"To the Publishers of the Farmer's Almanac:

"Please insert our advertisement, to occupy a space of one half page (op. April) top page half, for which we promise to pay fifty cents for each thousand *circulated*."

"(Signed), H. R. Ives & Co."

The plaintiffs claimed to have circulated 100,000 copies of the almanac, and to be entitled to \$50.

To this action the defendant pleaded that the almanacs had not been circulated under the terms of the contract; or according to the custom of trade; that all that the plaintiffs had done was to send the almanacs in quantities varying from 250 to 5000 to their customers throughout the Dominion; that defendant had always been ready, as appeared by his protest before the institution of the action, to pay for the *bonâ fide* circulation of his advertisement, but that plaintiffs had never furnished him with returns from their customers or with any reasonable proof of circulation.

At the trial the manager of the plaintiffs produced the receipts of their customers for quantities of the almanacs ranging from 250 to 5000, and (under defendant's objection as to the legality of this proof) stated that before the signing of the above contract he had explained to defendant the Company's method of doing business, which was to sell the almanac in quantities upon the orders of their customers, each bundle or set of almanacs having on the outside cover of each almanac the advertisement of the particular customer to whom the bundle was sold, thus offering him a direct inducement to circulate them. One of plain-

tiffs' customers deposed that he had received a quantity of 5000 almanacs, and that he had sent them in parcels to his customers for circulation.

The defendant examined two witnesses who gave their opinion that, according to the custom of trade, the distribution proved would not be considered a fulfilment of a contract for circulation, which (especially in the case of an ephemeral publication) meant distribution to individuals through the post or otherwise. The defendant also produced a letter from one of the plaintiffs' customers admitting that they still had on hand 250 of the almanacs (charged to defendant in the action) which they kept for agencies about to be opened.

MATHIEU, J., gave judgment for plaintiffs, on the ground that in his opinion they had in good faith done all that they contemplated doing by their contract.

Archibald & McCormick for plaintiffs.
Wotherspoon & Lafleur for defendant.

GENERAL NOTES.

Private seals have now been abolished in Ohio since March 29, 1883, but we do not remember of having seen a single instrument which required a seal in its execution before the statute that was without one since the passage of the act abolishing them. Every lawyer seems anxious for their abolition, but all seem to hesitate to drop them for fear some question may arise as to whether the particular instance was contemplated by the law.—*Cincinnati Law Bulletin*.

The *London Times* says:—"In consequence of the numerous applications which have been made to the Home office for an appointment to the place of public executioner, we are requested to state that it is neither the right nor the duty of the Secretary of State to make any such appointment. There is no such office as that of public executioner appointed by the Government. The person charged with the execution of capital sentences is the sheriff. It is the right and the duty of the sheriff to employ and to pay a fitting person to carry out the sentence of the law."

When the Lord Chief Justice of England arrived at Springfield on his way to St. Louis, he found the Hon. Milton Hay, one of the ablest lawyers in the State, at the depot, dressed in a new suit of the best broadcloth and a new silk hat, to welcome him to the Capital of the State, but the time allotted to Lord Coleridge would not permit him to remain over. There was a great contrast between this suit and the one worn by the distinguished lawyer when he was a candidate for colonel during the Black Hawk War.—*Chicago Legal News*.