The Legal News.

VOL. XI. JANUARY 21, 1888. No. 3.

Two interesting decisions, with reference to mistake or misapprehension on the part of the vendor, come from the Western States. One of them is undoubtedly erroneous. The first case, *Wood* v. *Boynton* (64 Wis. 265), occurred in Wisconsin. A poor woman, for the sum of one dollar, sold a stone which she believed to be topaz, the purchasers being jewellers in Milwaukee. When examined by a lapidary, it was ascertained that the stone was not topaz, but an uncut diamond the value of which was nearly a thousand dollars. Mrs. Wood, the vendor, on being informed of this, tendered back the dollar, and demanded the stone, which being refused, she brought an action to recover possession of the diamond. The court held that the stone being open to the inspection of both parties, both being ignorant of its real nature and true value, and there being no showing of actual fraud on the part of the jewellers in procuring the sale, the bargain could not be rescinded. This is not only contrary to equity, but is also very bad law. Pothier puts this very case: "Il n'y a point de contrat de vente si l'un compte vendre une chose, et l'autre en acheter une autre. Pareillement il n'y a point de contrat de vente, si l'on me vend un sac d'orge que je prends pour du blé: ou un tabatière de tombac que je prend pour de l'or; car quoique nous convenions du corps qui est vendu, nous ne convenons point *de la matière qui en fait la substance*, et par conséquent nous ne convenons point proprement de la chose vendu; ce qui fait dire à Ulpien: *Nullam esse venditionem puto, quoties in materiâ erratur; d.* L. § 2." It will be remembered that in England, in the famous case of *Reg* v. *Ashwell* (9 Leg. News, 45), seven of the judges were of opinion that it was larceny at common law for a person who had received a sovereign by mistake for a shilling, to retain and appropriate the money.

In the second and more recent case, *Sherwood* v. *Walker* (10 Western Rep. 636), which came before the Supreme Court of Michigan, the point was more difficult, but the court came to a conclusion which is totally opposed to that of the Wisconsin tribunal. One party sold a cow which, as a breeder, would be of great value, but was supposed by the owner and purchaser to be barren, and useful only as beef. The animal was therefore sold for 5½ cents per pound, but before she was delivered, she was found to be with calf, a fact which increased her value to nearly $1,000, and the vendor refused to deliver. The first court held that the discovery did not avoid the sale, though the real value of the animal was ten times the price agreed upon. The Supreme Court, however, held this to be error, and the sale was rescinded. The court said: "I know that this is a close question, and the dividing line between the adjudicated cases is not easily discerned. But it must be considered as well settled that a party who has given an apparent consent to a contract of sale may refuse to execute it, or he may avoid it after it has been completed, if the assent was founded, or the contract made, upon the mistake of a material fact, such as the subject matter of the sale, the price, or some collateral fact materially inducing the agreement."

LE TABLEAU DES AVOCATS.

D'après le tableau des avocats de la Province de Québec pour l'année 1887-88, publié au mois de mai dernier, il y avait alors 699 membres de cet ordre inscrits et ayant droit de pratiquer devant nos tribunaux.

Le plus ancien est Mr. Hugh Taylor, de la section de Montréal, résidant en Angleterre, dont la date d'admission remonte à novembre 1829.

Viennent ensuite quatre vétérans qui étaient étudiants dans le premier tiers de ce siècle, ce sont:

Mr. John Day, C.R., de Montréal, admis à la pratique en 1834.

Mr. L. G. Baillargé, C. R., de Québec, admis en 1835.

L'Honorable Mr. E. L. Pacaud, C.R., d'Arthabaska, admis en 1836.

L'Honorable Mr. R. Mackay, ex juge, de Montréal, admis en 1837.