

HUMOROUS PHASES OF THE LAW.

feel, like Hamlet, that the "heir bites shrewdly," will bless good Mother Winslow and good Judge Van Vorst. As for this wretched designing Bryan, he ought to be sentenced to read Judge Van Vorst's opinion of him. We would not like to be in his place for a considerable consideration. If he has any conscience at all, the feelings of the ruffians who smothered the babes in the tower, and of Macbeth, who "murdered sleep," must have been as nothing to his. The poet sweetly sings:

"Heaven lies about us in our infancy;"

but, when we read this report, we must conclude that it is Bryan who *lies* about us in our infancy. Let the wretched man go. Not even the original and genuine Mother Winslow can purchase slumber for his guilty eyelids.

"Not poppy, nor mandragora,
Nor all the drowsy syrups of the world
Shall ever medicine thee to that sweet sleep
Which thou ow'd'st yesterday."

So much as to the action of courts in assisting poor human nature to get its teeth *in* without pain. Now, let us see how it will aid us in getting our teeth *out* without pain. *Colton v. Thomas*, 2 Brewster, 308, tells us how. The plaintiff alleged that he had purchased from Dr. G. Q. Colton the right to use the name "Colton Dental Association" in connection with the use of nitrous-oxide gas to alleviate pain in the extraction of teeth, and that he used the same in advertisements, and prominently displayed it on signs; that the defendant, who had been in his employment, left him, opened dental rooms in the same street, issued cards, announcing that he was "formerly operator at the Colton Dental Rooms," and extracted teeth without pain by the use of nitrous-oxide gas, and put a sign to the same purport over his door, but that the words "formerly operator at the," upon cards and sign, were in small and almost illegible letters, while the words "Colton Dental Rooms" were very conspicuous; the signs were very similar in shape, size, etc., and were hung on the same side of the street, in the same manner, and might readily be mistaken the one for the other, "especially by suffering patients impatient for relief." An injunction against the defendant's cards and signs was granted.

As we have seen, the imitation need not be literal to sustain an injunction. Thus, in *Burnett v. Phalon*, 9 Bosw. 192,

the plaintiff's "Cocoaine" was held to be infringed by the defendant's "Cocaine;" and, in a French case, "Eau de la Floride" was held to be infringed by "Eau de la Fluoride." Here was a difference of only a single letter, but the court thought "the letter killeth."

But it is time to draw the moral from our subject. In the first place, we see that man is an imitative animal. Doubtless Mr. Darwin would derive comfort from the perusal of this paper, as affording evidence that we are all descended from Mr. Darwin's avowed ancestry. Be that as it may, the fact remains, man apes his fellow. Secondly: in the matter of trade-marks, in nine cases out of ten, the protection of the mark is sought for something not worth protecting or not needing protection. Nostrums form a large class, and things without which mankind would be as well off as with, or the thing infringed is no better than the spurious article; or the genuine is so much superior to the spurious article, that nobody will be deceived. So it is apparent that the protection extended is not for the public, but simply for individual benefit. Third: it is quite possible that if trade-marks were abolished all commodities would be improved, and less liable to adulteration or depreciation in manufacture. Mr. Wedgwood never patented his exquisite wares; he knew they could not be successfully imitated. Ulysses felt no uneasiness lest any one else should bend his bow. Wordsworth said to Lamb that Shakespeare was greatly overrated; "why," said he, "I could write just like him if I had a mind to." "Yes," replied Lamb, "if you only had the mind." There is quite a tempest in the literary tea-pot, about the authorship of "Beautiful Snow" and "Betsy and I are out," but "Paradise Lost" and "Hamlet" have had no imitators and need no trade-mark.—*Albany Law Journal*.