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SECTION 38 *OF THE LARCENY ACT.*

Lately we pointed out the objections to several proposed laws, to-day we purpose to direct attention to a very dangerous law. The 38th Section of our larceny act is not entirely of Canadian manufacture. With some trifling differences of phraseology the former part is borrowed from the English act 31 and 32 Vic. c. 116, Sect. 2, which is in the following words:

"If any person, being a member of any copartnership, or being one of two or more beneficial owners of any money, goods or effects, bills, notes, securities, or other property, shall steal or embezzle any such money, goods, or effects, bills, notes, securities, or other property of or belonging to any such copartnership, or to such joint beneficial owners, every such person shall be liable to be dealt with, tried, convicted and punished for the same as if such person had not been or was not a member of such co-partnership or one of such beneficial owners."

Our statute is in these words: "Whosoever being a member of any co-partnership owning any money or other property, or being one of two or more beneficial owners of any money or other property, steals, embezzles, *or* UNLAWFULLY *converts the same or any part thereof to his own use, or that of any person other than the owner,* shall be liable to be dealt with, tried, convicted and punished as if he had not been or were not a member of such co-partnership, or one of such beneficial owners."

The disposition in italics and capitals is the addition of our law. The object of the legislature in enacting these clauses was excellent. It was to give the protection of the criminal law to co-partners one against the other. It is perhaps to be regretted that every moral offence cannot be made the subject of some exemplary penalty. There can be no doubt that from a purely abstract point of view this is the highest administrative idea. But there seems to be a practical limit, very soon reached, beyond which it is found imprudent to go. If all immoral, *i.e.*, improper or unlawful, acts were to be subject to penal consequences, it is evident that recourse would be had to the criminal courts in every legal difficulty. The tendency in this direction is already considerable, and it is only restrained by the judicial influence, which has hitherto discouraged all these attempts. How long this reserve can be kept up, depends to a great extent on the wisdom of Parliament, and the moral courage with which members refuse to be intimidated by the fear of being mis-represented to their constituents. The 38th Section of the Larceny Act makes the line dividing crime from civil wrong-doing so undistinguishable that it belongs to a class of legislation which is highly dangerous. If any one will take the trouble to examine the relations existing between partners or beneficial owners, he will at once see how impossible it is to put a partner in the place of a thief without revolutionizing the whole doctrine of larceny. The *taking*, which is the essential act of stealing, cannot take place by the partner. Of course it will be answered, there may be a fictitious taking as when the conversion is assimilated to the taking, for example when a servant steals property under his charge. This however is no valid answer, for in such case the moral guilt is directly apparent. But in the conversion by the co-partner or part beneficial owner, the moral guilt, except in some very exceptional cases, can only be made apparent by a complete examination of the whole details of the business. The embezzlement alternative is not open to precisely the same objections, for in embezzlement there is no *wrongful taking*; but it has other objections of its own, and it is equally open to the difficulty that to ensure conviction, on even plausible grounds, the whole business of the co-partnership must be gone into.

Fortunately the text of the statute, in so far as it is borrowed from the English act, is so imperfect that no indictment can be framed under it. This difficulty is not acknowledged in England, it appears, or rather the point has not been raised. In the *Queen & Butterworth* (12 Cox, 132) it was objected that it was not a felony, but Lush, J., exclaimed, "if the offence is not a felony, what is it?" He might have been answered by one word,—"nothing." That this would have been the proper mode of looking at it was exemplified a few minutes later, by the same judge citing the 24 and 25 Vic., c. 96, s. 3, which says that a bailee fraudulently converting property "shall be guilty of larceny."

That is a proper form of enactment, and there would have been no objection to the form of Section 38 if it had declared that a partner fraudulently converting the property of the co-partnership shall be guilty of larceny. As another instance of the proper style of enactment, see with what care the statute makes it a felony, akin to larceny, to steal things attached to or growing on land. (24 and 25 Vic., c. 96, s. 31.) It is submitted that the form of Section 38 is as unusual, as it is inconclusive, and that a new felony has never been created before in such loose and untechnical language. The latter part of our statute, sins in a different direction, from the part borrowed from the subject of Mr. Justice Lush's admiration. It is too easily applied. It makes any *unlawful* conversion of co-partnership property a crime. So if a partner over-draws his account, or takes a three cent stamp for a private letter, he may be—it is difficult to say what may not happen to him—he might perhaps be sent to the retreat where those who go on board a merchant ship, without the leave of the Captain or the person in charge ought to be sent, if the laws of this land were impartially executed, which, luckily, they are not. Mr. Justice Taschereau has seen the difficulty, and he says (vol. 2, p. 456) that the second category "does not seem to mean that all unlawful conversions by a partner of partnership property will be indictable, but only that, when the converting would be a misdemeanour in any other case, the fact that the property is partnership property, will not alter the case." Here are bewildering modes of interpretation, "if it isn't a felony, what is it?" "it does not seem to mean;" but it must be admitted that the mode of the Canadian author is less objectionable than that of the English judge—the former restricts, the latter enlarges the scope of a criminal statute. The true method is to say that a criminal statute *means* what it *says*. R.

THE MARRIAGE BILL.

Mr. Girouard's Bill, to legalize marriage with a deceased wife's sister, was passed through the Commons on March 22 by a large majority. It gave rise to several interesting discussions which are too long for our columns, but which will be found in the *Hansard* Report for this year. An amendment was moved by Mr. Mills, "that the said Bill be re-committed to a Committee of the Whole, with instructions that they have power so to amend the same, that the law as to marriage with a deceased wife's sister may be uniform throughout Canada." This was negatived on division by 104 to 54. Mr. Amyot then moved in amendment, "that the said Bill be re-committed to a Committee of the Whole, with instructions that they have power to provide that every marriage celebrated by a competent religious authority, be declared valid and legal." This was lost on division. Sir Albert Smith then proposed that the bill be considered that day six months, which was lost by 113 to 36.

Two other amendments were then moved, the first by Mr. Strange, that the said Bill be re-committed to a Committee of the Whole, with instructions that they have power to amend it, by striking out all the words after "deceased wife" and inserting the following instead thereof:—"and between a woman and the brother of her deceased husband are hereby repealed, and such marriages are hereby declared legal and valid;"—which was negatived on a division. Mr. McCuaig then moved, that the said Bill be re-committed to a Committee of the Whole, with instructions that they have power to amend the same, by adding the following proviso:—Provided that no clergyman, or Minister of the Gospel authorized by law to perform the ceremony of marriage shall be obliged to perform such ceremony, if the woman is the sister of the former wife of the man to whom she desires to be married." This was also negatived on a division.

On the motion for the third reading, Mr. Amyot moved in amendment, that the said Bill be not now read a third time, but that it be *Resolved*, That the Federal Parliament has no jurisdiction to legislate on the qualities required to contract marriage, and that the terms and the intention of the Federal Act give that right exclusively to the Provincial Legislatures;—which was negatived on a division. Mr. Strange then moved in amendment, That the said Bill be not now read a third time, but that it be re-committed to a Committee of the Whole with instructions that they have power to amend the same, by striking out all the words after "deceased wife" and substituting the following:—"and between a woman and the brother of her deceased husband are hereby repealed, and such

marriages are hereby declared to be legal and valid";—which was negatived on division by 87 to 49. The Bill was then read a third time, and passed. As finally adopted, the measure reads as follows:—

"1. All laws prohibiting marriage between a man and the sister of his deceased wife are hereby repealed, both as to past and future marriages and as regards past marriages, as if such laws had never existed.

"2. This act shall not affect in any manner any case decided by or pending before any court of justice, nor shall it affect any rights actually acquired by the issue of the first marriage previous to the passing of this act, nor shall this act affect any such marriage when either of the parties has afterwards, during the life of the other, lawfully intermarried with any other person."

THE SUPREME COURT BILL.

The following are the provisions of the Supreme Court bill introduced in the Senate by the Minister of Justice:—

1. For the purpose of hearing and determining cases of the class hereinafter described of appeals from the Province of Quebec, the Supreme Court shall call to its assistance two "judges in aid," who shall be judges either of the Court of Queen's Bench or of the Superior Court of that Province, and who shall, for all the purposes of such appeals, have the like powers and duties as are possessed and discharged by the ordinary judges of the Supreme Court, and shall take, *mutatis mutandis*, the like oath regarding the discharge of the duties of office.

2. The Chief Justice and the other judges of the Court of Queen's Bench for the Province of Quebec, and the Chief Justice and five of the *puisne* judges of the Superior Court for the same Province, to be selected by the Governor-in-Council, shall be "judges in aid" to the Supreme Court of Canada, and commissions under the great seal shall issue to them as such.

3. The twelve "judges in aid" to the Supreme Court shall be placed upon a roster by the Chief Justices of the Queen's Bench and Superior Court, so as to place them in six divisions of two each—the two Chief Justices not being of the same division—and upon a warrant from the Supreme Court, under its seal, the two Chief Justices shall assign for duty, at each succeeding sessions of the said court, two or four of the said "judges in aid" who have not heard, in any of the courts below, the cases coming within the class herein described, in which appeals are set down for argument at the then next sessions of the Supreme Court.

4. Two or four of the "judges in aid" so chosen shall attend the then next sessions of the Supreme Court, if any cases of the class hereinafter described shall be set down for argument at such sessions, and two of them shall sit with the judges of the Supreme Court and hear and determine, with equal voice, all cases in appeal from the Province of Quebec coming within the class hereafter described, and such "judges in aid" for each sessions of the Supreme Court so attended by them, including the determining of the cases then heard with their assistance, shall be paid the sum of $300.

5. In every case of appeal from the judgment of any court in the Province of Quebec, a preliminary summary examination of the pleadings and papers in appeal shall be made by the Supreme Court, without argument or the hearing of counsel, and if the Court shall declare, by certificate under its seal, that the appeal is one the decision of which must be governed by, and adjudged according to, laws which are peculiar to the Province of Quebec, as distinguished from those of the other provinces of the Dominion, the case shall be deemed to be one coming within the class which may be heard under the special provisions herein enacted, and shall be heard and determined as herein provided.

6. The judges of the Supreme Court shall have power to make such rules as may be necessary for giving effect to the provisions of this Act, and from time to time to vary the same, and if necessary to make new and additional rules.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, February 28, 1882.

Before JOHNSON, J.

MORSE v. MARTIN.

Trade-Mark—Registration—42 Vict. c. 22.

Held, that a person who had obtained a trade-mark in the United States in 1870, *but who did not*

register the same in Canada until after the Act 42 Vict. c. 22 (A.D. 1879), had no action for infringement of mark against a person who had registered a similar mark in Canada in 1876.

PER CURIAM. This action is brought against the defendants for damages for fraudulently using the plaintiff's trade mark, and also to restrain him from further infringement of the plaintiff's alleged rights in respect of it.

The circumstances are somewhat peculiar. The plaintiff sets out that, being a subject of the United States of America and residing there, he, with his brother, as long ago as 1865 began to make a stove polish, which soon became known and valuable, and having acquired his brother's interest in 1868, he has ever since that time continued the business alone, under the name of Morse Brothers. In order to secure a trade mark in his own country the plaintiff caused the article in question to be put up in a conspicuous manner: that is to say, in small oblong cubical blocks, in wrappers of red paper, on which was printed a picture of an orb rising over a sheet of water, and across the picture, were the printed words "The rising sun stove polish." He then adopted that representation or device as his trade mark, and got it registered in his own country under an Act of Congress of July, 1870. The plaintiff then alleges that from the beginning of his business (*i. e.* from 1865,) he has used this trade mark both in the United States and in Canada, and that from the small packages and low price of the article, and from its being in great demand, people buy it without much examination, and their attention is generally caught by the shape and color of the oblong packets; and then he avers that for over two years past (*i. e.* two years from the date of the action, which is 30th January, 1880,) the defendant, intending to deceive purchasers, and injure the plaintiff, has manufactured and sold a stove polish put up very much in the same way, the difference being merely this, that whereas the plaintiff's trade mark as already described was an orb rising over water and the words "rising sun stove polish," the defendant used a vignette or picture of an orb or sun without any water, and instead of "rising sun," put "sunbeam" stove polish.

Then, the plaintiff says that about the 20th December, 1879, he registered his trade mark in Ottawa; and also, that the defendant (though it is not said when) has registered his, without, however, the picture of the orb; and merely using the words "sunbeam stove polish."

Then follow averments of damage, and the usual conclusions for condemnation to pay for the past, and for restraint in the future.

There was a demurrer to this declaration, and it was afterwards amended in some respects, and I have stated its effect as amended. Besides the demurrer, the defendant pleaded that long before the plaintiff's action he (the defendant) had been making and selling a stove polish in this country, and had registered his trade mark at Ottawa, in Oct., 1876, and that it is different in important particulars from plaintiff's. The amendment was permitted without costs, and there was subsequently a consent to defer the law hearing till the merits came up; and the whole case on law and merits is now before the Court.

The first question would seem to be: have we anything to do with the defendant's rights in his own country in this trade-mark anterior to the 1st of July, 1879? For he tells us that he only registered it in this country in 1879, and we have our own statute (42 Vic., c. 22), which says in sec. 4:—"From and after the 1st of July, 1879, no person shall be entitled to institute any proceeding to prevent the infringement of any trademark until, and unless such trademark is registered in pursuance of this Act." The question then would not be the general one, which might have arisen before the statute of 1879, whether a foreign trade mark was protected in the British dominions; probably it was, and we have the highest authority for saying so,—(see the cases collected and cited at p. 11, and p. 46 in Sebastian's Law of trade marks);—but the question now is, whether having the right before 1879 to prevent the defendant from using his trade mark, and not having exercised his right while it existed, before the passing of the statute, the plaintiff can now, after the statute of 1879, as quoted above, come into court here, and ask protection on any other terms than those contained in the Act. The defendant may have done the plaintiff a wrong during all those years, a wrong which nevertheless was not complained of until it was too late. In the face of this enactment, which, in the most positive terms, says that after the 1st July, 1879, nobody shall insti-

tute an action of this description unless his rights are founded on a trade mark previously registered here, can the present plaintiff come into a Canadian Court, and invoke the general principles which applied to the infraction of the rights of foreigners before the passing of our statute? The answer, I have no doubt, must be in the negative; therefore the plaintiff's right of action is completely gone in so far as it is founded on the general law previous to 1879. Then, as regards his rights subsequently to the statute, they would appear to be no better, for he says he has the right under the requirements of that statute, because he registered at Ottawa on the 20th of December, 1879, so that supposing the defendant here had no previously acquired right to oppose to him, the plaintiff could only complain of infractions between his registration (20th December, 1879,) and the 30th January, 1880, (date of the action), a space of forty days. But the defendant has a conclusive answer even to such a limited demand as that. He says:—"I registered my trade mark in 1876," which is true in fact, and therefore it appears to me that if the plaintiff had anything to complain of in the defendant's conduct prior to the statute of 1879, and chose not to do so, and if the defendant on the other hand, before the passing of the Act of 1879, and under the prior statute (31 Vic., c. 55) has registered a trade mark as his, he has acquired under the 3rd section of that Act a right to the exclusive use of that trade mark. Therefore upon all the questions of fact depending upon the enormous mass of evidence in this case, I give no opinion. I hold merely that, as the plaintiff only registered in this country in December, 1879, and abstained from exercising the rights he might have had before the passing of the Act of that year, he cannot under the provisions of the 4th section of that Act exercise any right of action in the premises as against the prior registration of the defendant's trade mark. I do not maintain the demurrer, because taking the plaintiff's allegations only (apart from the defendant's assertion of prior right), he might have had an action for infringement of his rights between the 20th December, 1879, and the 30th January, 1880; but the action is dismissed under the defendant's second plea, setting up the same pretension, coupled with the fact of his prior registration.

Action dismissed.

Coursol & Co., and *Kerr, Carter & McGibbon* for plaintiff.

Robertson & Fleet for defendant.

SUPERIOR COURT.

MONTREAL, March 10, 1882.

Before MACKAY, J.

REED v. ROY, and HUBERT et al., *mis en cause*. and THE ATTORNEY GENERAL, intervening.

Indirect taxation—Exhibits—Powers of local legislature.

The tax upon exhibits imposed by 44 *Vict.*,(*Que.*) *C.* 9, *being a tax which the person first paying it may charge against others, is an indirect tax, which the local legislature has no power to impose, and therefore the said enactment is ultra vires.*

PER CURIAM. These proceedings were commenced in May, 1881, by a rule taken by the plaintiff against the Prothonotary to have him compelled to receive and mark, "filed" the promissory note upon which the plaintiff's action is based.

The Prothonotary has refused to file that note because it has not upon it a ten cent law stamp.

The Prothonotary, answering the rule, says that by Sec. 32 of Chap. 109, Con. Stat. of Lower Canada, it is ordered that the Governor-in-Council may impose taxes on law papers and proceedings; that by the 27–28 Vict. c. 5 it was ordered that stamps should stand instead of the money taxes of the Chap. 109 before referred to or that might be imposed by any order-in-council under it: that by the 31 Vic. c. 2 of Quebec, the word stamps or stamp is defined to mean all stamps issued under Chap. 5 of 27–28 Vic., or under any order-in-council of the Governor of the late Province of Canada, or of the Lt-Governor of Quebec, or under this Act (of 31 Vic.) or any act of this Legislature; that by sec. 12 of 27-28 Vic., c. 5, it is ordered that no paper or exhibit on which tax or duty to the Crown is payable shall be received by any court or officer until stamped; that by sec. 10 of 31 Vic. c. 2 also, it is ordered that no paper upon which stamp ought to be, shall be received by any public officer: that by the Act of Quebec, passed in the 39th year of Vict. cap. 8, it was and is ordered that a tax of ten cents shall be payable to the Crown for the use of the Pro-

vince upon each exhibit, produced or offered in the Superior Court, &c., and that all dispositions of law applicable to former duties or taxes such as this should apply to the tax or duties imposed by this act of 39 Vic.; that by the Act of Quebec, 44 Vict. c. 9, all these stamp acts have been amended and recast, and a tax of ten cents imposed upon each exhibit offered to the Superior Court, and order made that no exhibit shall be received unless stamped.

Then a proclamation by the Lieutenant-Governor of Quebec is vaguely set forth, by which it was ordered by him and the Council that all exhibits should be stamped (when this was published is not stated; nor is it stated from what day the order was to take effect.) That they (the Prothonotary) are only doing their duty in asking a ten cent stamp to be put upon the promissory note offered as an exhibit by the plaintiff; that the plaintiff has no right to get the order he seeks against them, and they conclude for the discharge of the rule.

There is answer by the plaintiff that the Quebec Legislature statute law, by which the Prothonotary would justify the claim of a ten cent stamp from plaintiff, was and is *ultra vires* of the Legislature, not warranted, seeing the B. N. A. Act of 1867, that the ten cent tax or stamp duty is not authorized by that Act, and is not direct but indirect taxation, and therefore, illegal, and so the rule taken must be made absolute.

The Attorney General of Quebec has intervened in the case to support the Prothonotary, and his claim to have that ten cent stamp before filing the promissory note referred to. For reasons of intervention he repeats very much the arguments of the Prothonotary, but commences by alleging formally that the administration of justice is left to the charge and under the control of the Provincial Legislatures; that this administration causes great expense, and necessitates the employment of officers and servants, all of whom have to be paid by the Provincial Governments; that particularly the Government is obliged to employ persons to have care of all documents produced before the different courts of law, and that by law these persons are paid out of the consolidated revenue fund of the Province.

The plaintiff answers the Attorney-General very much as he does the Prothonotary; he adds some allegations, for instance, this one, that the ten cent tax upon exhibits demanded from plaintiff has no connection with the fees or salaries of the Prothonotaries or others employed in the courts.

Having thus fully stated the pleadings, I observe that the tax of ten cents on exhibits was first imposed by the 39th Vict. cap. 8 of Quebec, entitled "An Act to aid the grant for the purposes of the administration of justice." Its first section imposes a duty of ten cents, payable to the Crown, for the uses of the Province, to be levied on each receipt, bill of particulars, and exhibits whatsoever, produced before the courts. By its second section the duty is ordered to form part of the consolidated revenue fund of the province. These two sections of the 39 Vic. have been repealed by the 43-44 Vic. c. 9 of Quebec, entitled, "An Act to amend and consolidate the different acts therein mentioned, in reference to stamps." Its section 9 again enacts the duty of ten cents on bills of particulars, and exhibits, produced before the courts. The moneys levied fall by the 31 Vic. cap 9, to the consolidated revenue fund. The 43-44 Vic. c. 9 orders that it and the 27-28 Vic. c. 5 of the late Province of Canada as thereby amended shall be read together as one act. This 27-28 Vic. authorized stamps to be issued by order of the Governor-in-Council, and the provisions of it are ordered to extend to taxes and duty imposed by the 32 sect. of chap. 109 Cons. Stat. L. Ca., "so long as such fees continue to form part of the building and jury fund, or the officers of justice fee fund." Under the Constitutional Act, the British North America Act of 1867, the provinces may not tax, or raise revenue, just as they please. Subsection two of sect. 92 of it only permits direct taxation in order to the raising of a revenue for provincial purposes; a later subsection allows also shop, saloon, tavern, auctioneer, and other licences in order to the raising of a revenue for provincial, local, or municipal purposes. The Imperial Parliament has designedly laid specific restrictions upon the taxing power of the local legislatures. It has not abandoned the taxing power to their mere will. So the question: what is lawful taxation? may always be brought before the courts and will fall to be decided ultimately by the judiciary. It has been argued that the ten cents stamp duty is "direct taxation." If it be *that* it has been well enough imposed. What is

direct taxation? Its prominent feature is that it is exigible from, and is to be borne by, him who immediately pays it; a tax which the person first paying it may charge over to or against any other is an indirect tax. Stamp duties on law papers and proceedings are expressly called indirect taxes by almost all the writers on political economy, by all, in fact, except one, Mr. Craig, in so far as I have been able to discover. He wrote seventy odd years ago. Had plaintiff paid this ten cents tax he could tax it against defendant on getting judgment. It has been said for the Attorney-General that the local legislature charged with the administration of justice can impose any tax in order to provide for that administration. But it is not so; for, as said before, the local legislatures can only tax as by the British North America Act. The framers of that act knew the import of words. They knew what the power of taxation was and means. They give power to tax "by any mode or system," to the Dominion Parliament. Our condition would have been intolerable had like power been conferred upon the local legislatures. So the power of these is limited designedly, as I have said before. It has also been said that this stamp tax might have been imposed by an order-in-council under Cons. Stat. L. C., ch. 109, sec. 32, entitled, "An Act respecting Houses of Correction, Court Houses and Gaols." But it has been imposed, not by the Lieutenant-Governor-in-Council, but by another body, the Legislature, and its proceeds are to go, not to the Building and Jury Fund, but to the Consolidated Revenue Fund! The question before me is as to the power of the Legislature, not of the Governor-in-Council. I hold the stamp duty in question to involve, not direct, but indirect taxation, and that the Legislature of Quebec in imposing it has exceeded its powers. This stamp duty does not answer the description given of "direct taxation," and is no more such than was the one on policies of insurance under 39 Vic. ch. 7 of Quebec; so the rule taken by the plaintiff must be made absolute, and the intervention is dismissed.

Maclaren & Leet for plaintiff.

Lacoste, Globensky & Bisaillon for *mis en cause.*

Loranger, Attorney-General, for Quebec Government.

SUPERIOR COURT.

MONTREAL, March 15, 1882.

Before TORRANCE, J.

BEAUDRY v. LEPINE, and DORA COWAN, garnishee.

Pawnbroker—Attachment.

A pawnbroker is entitled to security that the pledge seized in his hands shall, if sold, produce enough to indemnify him.

The plaintiff had lodged an attachment in the hands of the garnishee, a pawnbroker, who declared that she had certain articles in her possession belonging to the defendant, and these she held as security for the payment of $124 and interest, and would give them up on payment of the debt due her. The plaintiff inscribed for judgment on this declaration.

PER CURIAM. The garnishee must have security that the articles if sold shall produce enough to indemnify the garnishee. Roger, Saisie-arrêt—No. 243.

The judgment was recorded as follows:

"La Cour * * * * *

"Attendu qu'il n'était aucunement prouvé que le gage en question fût d'une valeur supérieure au montant de la créance de la tiers-saisie, attendu que le demandeur n'a pas offert de désintéresser la tiers-saisie; renvoie la demande du demandeur pour jugement sur la déclaration de la tiers-saisie à moins que le demandeur ne donne caution à la Tiers-Saisie dans l'espace de 15 jours que ce dernier sera payée par la vente le montant de sa créance en principal, intérêts et frais."

Dalbec & Madore for plaintiff.

INSANITY AS A CAUSE FOR DIVORCE.

The *Lancet* remarks that, in the Divorce Court on Friday, the 16th Dec., a very important case was settled in reference to insanity. The case was *Hunter* v. *Edney*. In this case a woman was married, but refused on the wedding night to allow the marriage to be consummated. The husband sent for the mother of the woman, who took her home after she had been seen by Dr. Miskin, a general practitioner in the neighborhood. Dr. Miskin was of the opinion that she was insane. Some few weeks later, Dr. Savage, of Bethlem, saw the case, and decided that the woman was suffering

from melancholia, and not fit to enter into a contract, and that in his opinion she had so suffered for some time. The whole case took but a short part of one day, and there was really no opposition, for though the wife was in court, and elected to go into the witness box, she did not deny any of the statements made, but said that she had no knowledge of some of the things which were proved to have taken place during the time soon following her wedding. Thus, she did not remember, so she said, making an attempt to strangle herself. The judge, Sir J. Hannen, summed up clearly and fairly, and pointed out that the woman did not seem capable of understanding actions free from the influence of delusions, and was therefore incapable of entering into a contract like that of marriage, and he decreed the marriage null. This is the first case of the kind which has been decided, and is not by any means a solitary one, so far as the insanity and marriage are concerned. During the past year several cases have, we believe, been in Bethlem in which marriage was not consummated in consequence of insanity. In one, a man heard a voice telling him he must not touch his wife, and the same patient later heard a voice telling him not to eat. The case decided is a first one, and is incomplete. What line would have been followed if the marriage had been consummated, and, still more, if a child had been begotten? The inability to contract would have been the same, but we fear there might have been greater difficulty to persuade a jury—if a jury had been deciding—that a divorce was justifiable. In murder cases the feeling of many is moved against taking human life, but the life-long misery caused by an unjust marriage, in which one of the contracting parties was insane, is a suffering of the innocent which is unhappily overlooked. Such cases make it all-important that something should be done, and every step such as the one reached in the above decision carefully watched.—*Law Times*, London.

ADVERTISEMENTS AS NUISANCES.

The law of nuisance is sometimes put into operation with very beneficial results to the public; in fact, were it not for the resources which that law affords, the public would be left helpless in the fact of great inconvenience and annoyance. Take, for instance, the case of *Reg.* v. *Lewis*, heard last month before Justices Grove and Lopes. In these days competition is so brisk, and tradesmen find it a work of so much difficulty to gain a leading position, or to maintain it when gained, that resort is had to the most curious expedients to attract the notice of the public. The scene of the events which gave rise to the case to which we are referring, was laid in Manchester, where the defendants were the members of a firm of general dealers, or, as it has become the fashion to style them, universal providers, who were desirous of attracting custom to an extent which the more ordinary features of their establishment had failed to secure. To this end they filled their windows with photographs of well-known characters, so far following a common practice; but the peculiarity of the defendants' photographs was, that they represented the characters they portrayed in a variety of absurd and undignified attitudes, as posturing with Chinese lanterns, and so on. The result was, that they not only attracted the attention of possible purchasers to fully as great an extent as they could have desired, but that considerable crowds, consisting in a large part of idlers and bad characters, who obstructed the pavement and molested the passers-by, were collected. Remonstrances having been made without producing any result, and one of the employés of the firm having been prosecuted to conviction with as little effect, the firm themselves were prosecuted at the instance of the city corporation. A conviction was obtained, and the defendants were sentenced to pay a nominal fine, but were required to enter into their recognizances in a substantial sum not to repeat the nuisance. Healthy competition in trade is laudable in the competitors and calculated to conduce to the general good; but the benefits derivable from such competition are more than counterbalanced when free passage through the public streets is impeded, and persons lawfully traversing them are exposed to annoyance and injury. In taking the steps they did, the Corporation of Manchester set an example which might be imitated with advantage nearer home. The fiasco connected with the notorious Zulu photographs will occur to every one; but that is long since out of date, though not yet forgotten. There are, however, not wanting numerous opportunities for the display of zeal in behalf of the public. No one who has ventured down Fleet street on some summer afternoon, when the news of the result of some one of the great races was expected, can have failed to wonder how it was that such scenes were permitted to occur with impunity. This is one example, but only one of many, in which recourse might be had to the law of nuisance, so beneficially put in force in the Manchester case, for the suppression of hindrances to traffic, and the promotion of the general convenience.—*Law Times*, London.