(editor's note: This paper was transcribed from a handwritten cursive copy with various difficulties. For a perfect rendition, the reader might wish to consult the original, itself a copy, in the volume entitled *Literary Club Papers 1*, 1885 – 1886 Oct 3, '85 to May 29, '86) The original is very badly faded.

Legal Facetiae

There has been as much division of opinion among the public in regard to the recent mandamus cases decided by the Supreme Court as there was among the judges who sat in the cases, and some persons there are who express a fear that the decisions of that court may hereafter not be unanimous or even if they are that they will not be sustained by a unanimous public sentiment. But such alarmists may rest assured that the court is capable of arriving at such conclusions and stating them in such a manner that they must, as soon as heard, compel universal assent.

As a proof of this, take, for instance their opinion in State v. Johnson, 42 Ohio Sta. 137, a case decided this year concerning the insane asylum law. Say the court: "In the care and cure of the insane, Ohio is among the foremost and recent investigation and experience had shown that the best results are obtained by suitable persons using the best methods in asylums, properly located and built as to site and arrangements." Aside from the implication that it may have required "recent investigation and experience" to show this, is there a man present, whatever his politics, old enough to dispute the proposition, or whose intellect hesitates for a moment to give it full assent?

In a previous paper, the writer called the attention of the club to the fact that the Supreme Court of Illinois had twice decided that there is no such relation of trust and confidence between a man and his mother-in-law, as warrants her to presume that in a transaction between them, he will not cheat her. Since then, the Supreme Court of Louisiana has rendered a decision concerned with the same relation. In Rombach v. Insurance Co. 35 La Ann. 233 it was decided that a man has no such interest in the life of his mother-in-law as that he can take out a policy of insurance upon it; such a contract is against public policy as holding out to him an additional inducement to murder.

The French inhabitants of Montréal are a curious class of people. Their refusal to submit to vaccination in spite of the presence of an epidemic of smallpox which was weekly carrying off hundreds of them, while their English fellow-citizens who were vaccinated, enjoyed almost entire

immunity from the disease, shows a remarkable difference between the two races. If the French of that city however are all alike Mons. Lebeau there is a still more radical difference, and one which makes hopeless any dream of ever amalgamating the two races into a homogeneous community. Mons. Lebeau having had a difference with Mons. Turcot, the sexton of his church, on the following Sunday Mon. Turcot, while taking up the collection, refrained from seeking a contribution from Mon. Lebeau. The latter, conceiving himself thereby greatly humiliated, sought reparation for the insult in the Superior Court of Montréal, and the Court, holding that a willful and marked omission to present the plate to a member of the congregation was sufficient to found an action, awarded the plaintiff the sum of five dollars damages: 19 C. L. J. 182.

Though the silliness of it has often been demonstrated, it is still a favorite and reckless assertion of protectionists that American free-traders are bribed with British gold. But what fair-minded man can doubt in view of its recent language concerning the hog, that the Supreme Court of Wisconsin has been corrupted by protectionist Bismarck and Prussian lucre.

In the case of Solverson v. Peterson 32 Alb.L.J. 423, in which it was held that it was actionable per se to call a man a hog, the Court used language as follows: “Is not this the most offensive kind of ridicule, and most intensely contemptuous, and does it not tend, and was it not intended to bring the plaintiff into ridicule and contempt, and to injure his standing and reputation as a citizen? How could a man be lower, meaner, or more filthy, than to have the character, habits, and ways of a swine? Of course, no one would understand that the defendant intended to charge the plaintiff with being veritably a hog. The plaintiff is compared with this low and filthy animal to indicate that he has fallen to the very lowest degree of human degradation, morally, intellectually, and physically. It was supposed that the prodigal had fallen to the very lowest condition when he became the associate of swine, and lived upon the same food. In comparing the plaintiff's present character and condition with that of a swine, the publication does not limit the invitation to any particular quality of an animal, and therefore the public may well understand that it was intended to impute to him all the offensive qualities of a hog, and certainly the article was not intended to give the plaintiff the credit of having any of the good qualities of that animal, if it has any.”

For the particular benefit of the doctors and to show them that learned courts

are not incapable of following metaphors from sciences other than the law, let us give a sentence from the opinion in the case of Bottoms v. Kent, 3 Jones N. C. L. 155 a previous decision of theirs having been cited to them as a precedent, they say of it: “is overruled by Tilly's case, or so masculated (*sic*) as not to be able to generate a principal, and is expressly confined to its peculiar circumstances.”

For metaphor, one must of course go to the courts of the Southern States, where the climate seems to cause the imagination to run riot, just as it does vegetation. As a single gem from a casket of jewels, let us take the language of Judge Beckley in the case of Cunningham v. National Bank of Augusta, 71 Ga. at p 403, in which it was held that dealing in “cotton futures,” that is, contracts in form of sales of cotton for future delivery, but with the intention on both sides to deliver no cotton, but to settle by payment of differences in the market price, was gambling.

Said the Judge: “a betting on a game of faro, brag, or poker can not be more hazardous, dangerous or uncertain. Indeed, it may be said that these animals are tame, gentle, and submissive, compared to this monster. The law has caged them, and driven them to their dens, they have been outlawed, while this ferocious beast stalking about in midday, with gilded signs and flaming advertisements, luring victims to an embrace of death and destruction, is one which the writer believes will cause the beholder, it if not to quit dealing in futures at least to change the brand of his whiskey.

That love is blind the whole world has known ever since the Greeks first said so, and the Supreme Court of Iowa therefore finds it not unnatural that the object of an overwhelming passion shall have ocular defects. In Hanna v. Wilcox 53 Ia. 547 a conveyance by a man to a woman with whom he was living in adultery, was set aside by the court on the ground that his infatuation so overpowered his judgment that he really did not know what he was doing. The characters in this drama of love's young dream, are thus described by the court. He “was 80 years old when this adulterous connection was formed, and his mind was to some extent impaired by his age.” She, “was 35 years of age. While she was ignorant, deaf, had lost an eye, and had no womanly charms, she possessed great force of will, and determination of purpose.”

It seems that not only man, but even the brutes may be lured to their ruin by the so-called gentle passion, as witness the fate of a Kentucky dog,

immortalized in the case of Bradford v. McKibben 4 Bush 545. A statute of Kentucky made it “lawful for any person to kill or cause to be killed, any dog which he might find roaming at large on his premises without the presence of the owner or keeper of such dog.” McKibben found Bradford's dog unattended on the former's premises, and forth with killed him. Thereupon Bradford sued McKibben for the value of the dog. McKibben relied for his defense upon the protection of the statute which Bradford said was no protection under the circumstances, for that the deceased dog was a gentleman dog who, by reason of the presence of a lady dog or lady's dog was irresistibly drawn by overwhelming compulsion to McKibben's premises. The poet says that love rules the court, the camp, the grove. But he was mistaken as to the Court of Appeals of Kentucky at least, which disposed of the case in the following language.

“Whatever may be the temptation therefore to entice a dog from home without the presence of his owner or keeper, even though it be for the propagation of the species, his innocence is no protection to him, if he is found roaming on a neighbor's premises without the presence of his protector, his life is forfeited if the owner of the premises on which he is found will exact the penalty, and chooses to execute the sentence. As the excuse alleged for this dog's absence from home is not inserted in the statute and made so to operate, the court has no power to give effect to it; and the court below did not err in refusing to permit appellant to prove the existence of the temptation to invite the dog to leave his home.”

But let us turn from the contemplation of the sad spectacle of this poor dog, slain in his guiltlessness, his life forfeited in spite of his innocence, look upon another picture, that of guilt fairly caught, and sternly punished – by a fine of fifty dollars.

The City Council of Shreveport Louisiana passed an ordinance making it an offense to conduct a house of ill fame in an indecent manner. Miss Fanny Roos was arrested and charged with having violated this ordinance; tried, found guilty of the offense charged and upon conviction was fined fifty dollars. Rightly believing that no one calling herself a lady should leave standing against her a record if it could possibly be helped, she took the case to the Supreme Court of Louisiana. But alas for Ms. Roos, instead of succeeding in annulling her conviction so as a fly is preserved in amber, did she forever preserve the record against yourself in the 35 La Ann report of the Supreme Court of that state, where beginning at page 1010 it may to the

end of time be read of all men – and ladies.

Miss Roos' point of law, on which she asked a reversal of her conviction was that the ordinance was void for vagueness and indefiniteness; that no one could say just what was meant by keeping a house of ill-fame in an indecent manner; that she had a right to know with particularity just what acts of omission or commission she was charged with, so that she might prepair herself with evidence to disprove them. But the court said as follows:

“It could scarcely be expected that an ordinance affecting houses of this kind should specify the particular act of indecency which will render its inmates obnoxious to the law's denunciation. These acts may be so various in kind and so differing in degree and withal so numerous as to defy specification. The experience of the city fathers in that domain is doubtless so limited, that in drafting an ordinance which should comprehend all the indecent convolutions of lascivious cyprians, they would be forced to put fancy on the wing and imagine postures they never be held. This would be dangerous occupation. Neither the law nor the right of accused parties to be informed of the nature of the accusations against them imposes such particularization upon the corporation authorities.”

To close with, let us go back to our friend Judge Bleckley taking the case of Neal v. State 5 Ga 86, it was laid down, and the rule has been followed in many subsequent cases that were there has been an improper separation of the jury during the trial the prisoner, if found guilty, is entitled to the benefit of the presumption that the irregularity was hurtful to him, the onus being upon the state to show, beyond a reasonable doubt, that it did him no injury. But must we therefore hold that a like presumption arises out of a proper separation, – proper in time, manner, and circumstance? Surely not. And what can be more fit than for the court to send out a juror attended by a bailiff when he is under a stress of nature which civilized man regards as a summons to retire? A comparison of the various possible methods of meeting and dealing with such an exigency had better be left to silent meditation, than discussed here with needless realism. It is enough if those who may become interested in the subject will form a mental picture of the situation, and contemplate it for themselves. It is inferable from the records that the absence of the juror was not for a longer time than was necessary, and he was under the immediate watch and guard of the bailiff all the while.”

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