

LEGAL MISCELLANY.

The first number of THE AMERICAN LAW REGISTER is given to the profession by its editors, with some solicitude. The difficulties attending the commencement of a journal are great, especially where, as in the present case, inexperience is added to a necessary haste of preparation. The selection of matter in a work of this kind, is, at first, limited. Those contributions, upon which its chief merit must depend, are not to be obtained at once. The right balance, too, amongst the variety of objects to be pursued, and of tastes to be consulted, can only be learnt in time. While some would desire the journal to devote itself merely to the practical side of the law, others might wish a higher and more scientific standard adopted. The editors cannot hope to have found the true medium. They will endeavor, however, to compensate in some degree, by industry and zeal, for such defects as error of judgment or want of ability may lead them into. They submit themselves, therefore, to the kind judgment of their brethren, trusting that the LAW REGISTER will not be found entirely without interest or value.

—An important point, as to the liability of carriers for the character of the articles conveyed by them, has just been decided by one of the courts at Paris. It seems that the game laws of France prohibit not only the sale or hawking of game out of season, but even its transportation, *transport*) at such time. On the 26th of last July, there was deposited at the station at Jouy, a basket, in which was a bag containing live birds, which the person sending asserted to be pigeons. The parcel was placed on a train coming from Chartres, and was conveyed to Paris, where, on inspection by the custom's officer, the alleged pigeons proved to be thirty-nine fine quails. On these facts, the conductor of the train was cited before the tribunal, and the rail road company (*de l' Oust*) also summoned as civilly liable. In defence it was urged that the conductor knew nothing of the contents of the basket, which the company had neither the right to open, nor if they had this, to refuse to carry, and that it would be extremely hard to make them liable for what they thus could not prevent, especially, when as in a particular instance, both the name and residence of the party who sent the same, were unknown. But the court,

notwithstanding these arguments, imposed a fine on the conductor of fifty francs, and declared the company civilly responsible. We do not, at present, remember any decision at the common law, exactly on all fours with this of the French court; but it appears to be a general principle, at least in revenue cases, that a ship will be forfeited for having on board articles prohibited by the laws of the country to which she comes, though they were shipped without the knowledge or consent of her master or owners. (See *Phile v. The Anna*, 1 Dall. 197, 207; *Blewitt v. Hill*, 13 East. 13; *Sparks v. West*, 1 W. C. C. R., 238.) A different doctrine, however, has obtained in modern times, with regard to goods contraband of war, unless the vessel also belongs to the owner of the goods, or in cases of fraud, (Wheaton on Captures, 182, 1 Kent Comm. 143.)

—The Athenæum of September 4th, says that the Criminal Tables for 1851, show the decrease of crime, as compared with the amount ten years ago, to be still maintained, “For,” says that journal, “although a slight increase of 4.2 per cent. marks the returns of 1851 as compared with 1852, the increase of population may be most fairly adduced as a satisfactory cause for this.” The commitments during the last ten years, stand thus:—

1842,	31,309	1847,	28,833
1843,	29,591	1848,	30,349
1844,	26,542	1849,	27,816
1845,	24,303	1850,	26,813
1846,	25,107	1851,	27,960
Total, . . .	136,852	Total, . . .	141,771

In 1841 the commitments were in the proportion of 1 in 573 of the population, while, according to the last census returns, the proportion in 1851, is reduced to 1 in 641. While the population has increased 12.6 per cent., the increase of commitments has only been a fraction per cent. The relative progress of population and crime, according to the employment, is noticed by the writer. In the large manufacturing districts, the proportion of commitments has signally decreased. Thus, in Yorkshire and Lancashire, the population in the last ten years, has increased 18.2 per cent., the commitments decreasing 4.3 per cent.; in Staffordshire and others, population increased 20.4 per cent. and commitments decreased 5 per cent. In the purely agricultural counties, the results are less rapid;

in one or two, indeed, there has been a falling back. The particular classes of crime in which an increase has been observed, are unnatural offences; robbery, the increase of which is marked larceny; malicious offences against property, as arson and obstructing rail-way carriages; and counterfeiting, the increase of which is 36 per cent. in two years.

The result of the judicial proceedings is classified thus:—

	1850.	1851.
Not prosecuted, &c.,	141,	131,
“No Bills,”	1,458,	1,484
Not guilty on trial,	4,639,	4,744
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Acquitted or discharged,	6,230,	6,359
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Acquitted on ground of insanity,	26,	13
Found insane,	12,	9
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Sentenced to death,	49,	70
“ transportation,	2,578,	2,836
“ imprisonment,	17,602,	18,418
“ whipping, fine, &c.,	307,	248
Pardoned without sentence,	1,	7
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Total convicted,	20,237,	21,579

Out of the 70 convictions for murder, 10 only appear to have been executed. The increase in these convictions arises chiefly on the offences of burglary and robbery, accompanied with personal violence or injuries. The great increase of cases of poisoning by women is noticed, there being 41 females to 33 males; the average of offences against the person, generally being 13 women to 100 men, or of all crimes, 24 to 100.

—In the Court of Queen’s Bench in England, a question of some importance to tavern-keepers was recently discussed. Mr. Archbold moved for a certiorari to remove the conviction of one Ashton, a publican, for suffering the “unlawful game of *dominoes*” to be played in his house, on the ground that no effence appeared on which it could be based. The statute 33 Henry VIII., c. 9, enacted that no person should, for gain, keep any house or place of bowling, cowting, (quoiting,) cloysh-cayls, (nine-pins,) half bowl, tennis, dicing table, or carding, or any other game prohibited by any statute therefore made, or any new unlawful game, invented or to

be invented; and the 9 Vict. c. 209, repealed the prohibition of games of mere skill, contained in the 35 Hen. VIII., such as "bowling, cowering, cloysh-cayls, half bowl, tennis, or the like," leaving games of chance still under the prohibition. The game of dominoes was not mentioned in the statute of Henry VIII., and was not an unlawful game at common law. Lord Campbell said that he thought dominoes was a game of chance, as well as of skill; *much depended on the hand you got*. In this respect it was like the game of whist. A rule nisi was, however, granted.

— An act passed at the last session of the Legislature of Massachusetts, has practically abolished the death-penalty in that State. The statute, regulates the proceedings in a capital case, down to the sentence of death as usual. It then provides that the governor may, *if he see fit*, after one year, issue a warrant for the execution of the person convicted. This discretion to hang is one which it is probable will not often be exercised.

— In the case of *The Propeller Genessee Chief v. Fitzhugh*, (12 How. U. S. 443,) the Supreme Court has recently decided, overruling several previous cases, that the "Admiralty and Maritime jurisdiction" given by the Constitution to the Courts of the United States is not limited to tide water, but extends to all navigable streams; that is (according to the act of 1789,) to those navigable by vessels of ten tons and upwards. This will bring within the range of the Admiralty, the Mississippi to the Falls of St. Anthony, and Pittsburg, the Susquehanna, and in fact every stream of any importance in the United States. As questions of collision and on the law of carriers are daily arising, especially on our Western waters, our readers will see the very important character of this decision.

— Mr. Webster's death, the news of which we received as these sheets were passing through the press, is a sudden and a heavy blow. In him the nation has lost perhaps the noblest orator and the greatest statesman she has yet produced. There is something peculiarly solemn in the occasion of this melancholy event. Mr. Webster was the last of those mighty men, to whom the education and development of the Union were entrusted by its founders, and to whose fidelity and wisdom we owe the preservation of our institutions, and the unexampled prosperity which we enjoy, Their task accomplished, they have been taken from us, one by one; and our tutelage, if we may so speak, is ended. But this period of maturity is one of anxious solicitude. The elements of a mighty change are working within us, whose direction is unknown. We have left the past with its secure traditions, and are entering upon a career without precedent and

without guide. Like some strong ship, emerging from the safe embrace of the river, and the widening bay, the republic has begun its uncertain path upon the vast ocean of the future. What that future is—what of good or ill lies beyond the swelling horizon—we cannot tell. The issues are not in our hands. But in any lot which may fall to our share, we shall to often have occasion to deplore M. Webster's loss. We may no longer have his eloquence to adorn our success, or his wisdom to counsel us in the hour of emergency.

The admiration with which the talents of Mr. Webster were regarded by his countrymen, was not exaggerated. He possessed a genius of the rarest kind. Not of that feverish, irregular, exceptional sort, which is too often the characteristic of the orator; its excellence lay in its breadth and completeness, its energy and its health. His mind was of more than ordinary scope. Like the pentathlete of the Olympic games, his contests were upon every arena; and in all, he was first. Profoundly versed in the science of politics, his chief study was the history of his country; his chief aim, the maintenance of its Constitution. To this he devoted his life, and for it, sacrificed even the attachment and confidence of his adopted State. While thus fixed upon the past, there was yet, nothing timid or retrograde in his mind which seemed to expand with, or even beyond, the advance of the age in which he lived. His patriotism was pure and ardent, and as he loved the liberties of his own land, he was ever among the first to sympathize with the struggles of freedom elsewhere. Of his eloquence there needs little to be said. It was by nature strong, sustained and majestic; but with this he possessed a rich store of feeling and imagination, by which he could charm the fancy, or affect the heart. As an advocate, he was rarely surpassed. As a lawyer, he was profound, learned and accurate. After the brightness of such a life, its close was most appropriate. Mr. Webster has died in the service of his country; if not in its highest office, in that from which the most is required. Still at his post, his failing hand unclasped the helm of State.

These hasty remarks have fallen spontaneously from the pen. They are the echo of what is on the lips of all around us. The fame of Mr. Webster needs, indeed, no obituary to preserve it from oblivion. What he was and what he has done, are now a part of the history of the nation, and will be read in it. His great qualities, which have been our pride and wonder, will be a part of the inheritance we shall transmit to posterity. *Quidquid ex illo amavimus, quidquid mirati sumus, manet, mansurumque est, in animis hominum, in æternitate temporum, fama rerum.*