*Surety of Tax Collector.*—It is no bar to an action against the surety of a tax collector that at the time of his appointment he was in default as collector for a previous year. *Borland* vs. *Washington Co.* LOWRIE J.

*Witness—Promise to pay.*—When a debt is justly due and a debtor promises to pay it when he gets his money and suit settled against a third person, if the creditor would wait, such a promise is not contrary to the policy of the law. *Grove* vs. *M'Calla.* LEWIS J.

Such creditor may be called upon to testify in such suit and the debtor's promise will not be thereby invalidated. *Ibid.*

*Will—Trusts—Construction of words.*—Where one devises all his real estate for life and all his personal estate absolutely, "having full confidence that his wife will leave the surplus to be divided at her decease justly among her children," the words do not of themselves import a trust, nor will they be so construed without other expressions to control them. *Mekonkey's Appeal.* LOWRIE J.

Words in a will expressive of desire, recommendation, and confidence, are not words of technical, but of common parlance, and are not *prima facie* sufficient to convert a devise or bequest into a trust; and the old Roman and English rule on this subject is not part of the common law of Pennsylvania. *Ibid.*

Such words may amount to a declaration of trust when it appears from other parts of the will, that the testator intended not to commit the estate to the devisee or legatee, or the ultimate disposal of it to his kindness, justice or discretion. *Ibid.*

By this will the absolute ownership of the personal property of Mr. Pennock is given to his widow, with an expression of mere expectation, that she will use and dispose of it discreetly as a mother, and no trust is created thereby. *Ibid.*

## LEGAL MISCELLANY.

——The discourse of M. Berryer, as *bâtonnier* (president of the order of barristers), delivered, at the recent opening of the *conférence* of advocates at Paris, has attracted great attention from the manliness of its tone, and the courage with which, at the present time, when freedom of speech is proscribed, he vindicates the independence of the bar. We subjoin some extracts, which will give an idea of the style and character of this address.

M. Berryer is a legitimist of the purest and most consistent personal character; he is at the same time among the most distinguished statesmen and the most learned and eloquent advocates in France.

This eulogium on the French bar is striking:

"The duration of the ancient institution of the French bar, left standing in the midst of so many ruins, without an alteration in its constitution, its franchises or its principles, is a remarkable fact. M. d'Aguesseau has well said of our order, that it is 'as old as the magistracy, as necessary as the administration of justice.'

"Go back to the most remote period, read over again the *ordinances* of our kings in the twelfth and thirteenth centuries, consult that especially made by Philip of Valois in 1344; in them are written the statutes under which we practise, and which we guard with vigilance to this day.

"There are, indeed, lawyers in all countries, but nowhere does there exist a bar constituted like that of France. The order of advocates, regulated as it is, like the great and salutary office of public prosecutor, is an institution peculiar to our country. The origin of both is common and contemporaneous. In the earlier periods of our great judicial bodies, to the members of the bar, to advocates even, daily exercising their profession in the service of private interests, the functions of public prosecutor, in causes where such intervention became necessary, were confided by the throne. Thanks to the regulations of our body, advocates have always preserved, in the exercise of their profession the same spirit which inspired the noble answer of M. Henri de Mesmes, when refusing from Francis I. the place of the *Advocat Genèral*, M. de Rugé, who had fallen under the displeasure of the king. 'He is my own advocate,' said the latter, 'Every man chooses one to his liking. Shall I be in a worse position than the meanest of my subjects?' 'He is,' replied M. de Mesmes, 'the advocate of the crown, not obedient to your passions, but to his duty.'

"Yes, gentlemen, our regulations thus maintained our independence because they uphold among us strict principles of disinterestedness and loyalty. They ennoble our office, and I may say, too, they elevate the art of the orator in giving to his words an authority which commands respect.

"Beware that you do not misconceive the character of this independence. As the learned and venerable M. Henrion de Pensy has said, it is the liberty of a man *too proud to have protectors, too powerful to have favorites*. The advocate is without servants as without masters. He is animated by no spirit of rebellion or hostility to authority; this independ-

ence is the sentiment of one whom nothing can deter from duty, nothing can compel to wrong.

"Free, because not subjected to the will or caprice of power, the true advocate can never incline before the passions of his client. His disinterestedness is his strength; throwing off every yoke, he asserts the freedom of his mind, he establishes himself in the love of justice and truth, and in a zeal for the rights of all, and exalts in his heart the consciousness of the nobility of his office.

"It is this sentiment of honor which makes our profession beloved, and attaches us to the duties which it imposes. It gives to the orator that calm self-possession which preserves the judicial arena from the storms of interest or the violence of passion. It impresses on his language that high propriety and that frank dignity which elevates even the majesty of justice, before which it is heard. A judge in some sort, before being counsel, the advocate applies himself conscientiously to a profound study of his cause; for the case best argued is always that which has been the most honestly examined. * * * * * * * *

"In this way is the work of justice worthily prepared. These are our guarantees with the magistracy and the public. We are eloquent through the heart, and the heart vibrates only under a sense of proper self-respect. Ingenious subtlety, brilliant powers of mind may astonish and captivate for a moment; but profound emotion and fervent and impressive speech come only from a soul honestly inspired, honestly convinced; and these alone can plead powerfully, and carry away the reason and the conscience of the judge."

M. Berryer, admitting that great oratorical success can be obtained but by a few, finds, nevertheless, place at the bar for more ordinary talents. After citing several examples, particularly that of M. Caubert, who lived beloved by his colleagues and honored by the bench, he concludes thus:

"The example of such a life must inspire him who is not seduced by the fame of brilliant success with a love of our profession, and encourage him to enter on its career, whatever be his modesty or self-distrust; it is because it offers such noble and weighty advantages that the profession of the law has ever been dear to those who can comprehend the duties and remain faithful to the traditions and observances, which assure our dignity and independence.

"From the midst of the illustrious orators, the great juris-consults, the men of exalted knowledge and wise judgment who have been formed by

our order, power has often sought its most eminent functionaries and most able defenders. When the storms, so frequent in the regions of government and politics, have prostrated authority, the throne, the higher officers all have felt themselves proud to return to this certain and honorable career; and more than one has regretted quitting it for a day. Calm independence, a dignified but tranquil life, a devotion to right and justice, give vast strength to the soul, and are a sacred refuge in the evil days against political agitation and calamity.

"As for me, gentlemen—for one may speak of himself in these conferences, where each brings the tribute of his own experience—I may thank God that he has inspired me from my earliest youth with the desire and the resolution to consecrate my life to the practice of the law, and to follow the example of a father who, for more than sixty years, remained attached to the labors and principles of our order. If, without ceasing to be an advocate, I have been called to the tribune, I trust that I have ever showed myself faithful to the spirit of our regulations, and to the sentiment of our independence.

"Let me hope that in the long and difficult trials through which I have passed I have deserved the honor which the suffrages of my colleagues have conferred upon me, and that I may in some degree make myself useful to you. Proud of having to accomplish the task confided to me, I shall endeavor to follow and to encourage your labors. I have no longer to share my life between the duties of the advocate and the legislator; the tribune is mute, but the sanctuary of justice remains inviolable."

——A recent English paper gives the following amusing report of a case in the Court of Exchequer:—*Duff and others* (directors of the Commercial and General Life Assurance Company) v. *Gant*, in which an important decision was given by the judges as to the obligation of a party assuring his life to disclose material facts respecting which he may not be questioned.

The cause was tried before Mr. Baron Maule, at Guildhall, and on the material issues the verdict was found for the defendant. The action was on a bill of exchange, but in point of fact the question was on a disputed policy of assurance.

Mr. Edwin James moved for a rule *nisi* for a new trial, on the ground of misdirection. The learned counsel briefly stated the facts of the case, which appeared to be as follows:—The plaintiffs are the directors of the Commercial and General Life Assurance Company, and the defendant was

the surety of a man named William Crabb Knight, now deceased. In the year 1850 Knight borrowed the sum of £200 from the above Company, and, as security for the same, insured his life to the amount of £600, and also gave the personal security of the defendant, Mr. Gant. The policy of assurance was effected on the 22d of May, 1850, and on the 15th of May, 1851, Knight, being insane at the time, committed suicide by drowning himself. The assurance office then brought an action against Mr. Gant on his promissory note of £200. The defendant set up against this claim the policy of insurance, which the Company declared to be void on the ground that the deceased had fraudulently concealed from them the material facts of his mother and brother having died insane. The question proposed by the office, on which this was grounded, was the following: "If aware of any disorder or circumstance tending to shorten life or to make an assurance more than usually hazardous?" For answer to this the deceased had written, "Don't know of any." At the trial, one of the issues, as to the fact of the deceased's mother and brother having died insane, and of his having been aware of this at the time he effected the insurance, was found for the plaintiffs. Mr. James now contended that it was material that the deceased should have communicated to the office the manner in which his relations had died.

*The Lord Chief Baron.*—It was not necessary that a man should voluntarily state the circumstances attending the deaths of his relations: Suppose a man was in the habit of bathing twice a day, and that he was not aware that such a practice tended to shorten his life. The non-statement of this fact would not render his policy invalid. He himself had known a gentleman living in the neighborhood of Cambridge who had bathed throughout the year; but he was so far from believing that the habit was injurious, that he imagined he was gaining strength and vigor from it.

*Baron Alderson.*—I believe, for instance, rowing matches at Oxford and Cambridge tend to shorten the lives of the undergraduates. (Laughter.)

*The Lord Chief Baron.*—Surely a man is not bound to tell an assurance office that he is in the habit of hunting every day during the season, although it might break his neck some day.

*Mr. James.*—No, my lord. It was proved in this case that Knight, immediately before his death, filled up a proposal for an assurance, and

that he then voluntarily stated that his mother had died insane at 73 years of age, and his brother at 45.

*Mr. Baron Platt.*—That tends rather to show the *bona fides* of the deceased, when his attention was drawn especially to the manner of their decease.

*The Lord Chief Baron.*—If the proposal does not require any information on gout, it is not necessary that a man should state that his father and mother were afflicted with that disease.

*Mr. James.*—He is bound to state the existence of hereditary disease.

*The Lord Chief Baron.*—No, if you do not put any question about it. It was held by the celebrated Browne, the founder of the Pneumonia system, that if Peter inherits his father's estate he will also inherit his gout, but not otherwise. Suppose an office asks whether a person has a desire to go up in a balloon. (Laughter.)

*Mr. James.*—But the desire to go up in a balloon is not hereditary. (Laughter.) If it was known that a man had a monomania for going up in balloons, it would render the insurance more hazardous.

*The Lord Chief Baron.*—Suppose a man were in the habit of sleeping without a night-cap? (Laughter.)

*Baron Alderson.*—Or with a night-cap. (Renewed laughter.)

*The Lord Chief Baron.*—You must not only be aware of the habit, but that it tends to endanger life.

*Baron Alderson.*—I think you are bound to communicate to the office the evidence of any present disorder; but it is not necessary to go into circumstances which might possibly tend to shorten life.

*The Lord Chief Baron.*—Suppose a man about to effect an assurance lived in the neighborhood of Holinfirth, he would not be bound to state that as a circumstance tending to endanger life. Rule refused.