

ant pleaded in substance that the plaintiff had paid off and discharged all the indebtedness of the bank, and had therefore no right to sue; on demurrer to this plea, it was *held*, to be no objection to it, that if issue be taken upon it, the Circuit Court would have to try the question, whether the debts of the bank were paid or not, and that was a question merely of fact, which, however complicated the proof, the jury were competent to decide.

LEGAL MISCELLANY.

We have given in another part of this number a recent decision of the *Cour de Cassation*, upon a question of copyright. Another decision of some importance in the law of intellectual property was made at the audience of the 11th of April last, in *Cour Imperial de Paris*. This was the case of *La Societe des Compositeurs vs. Les Directeurs des Theatres*. The question was presented in this form. In the year 1852 MM. Henrion, Dupont, Parisot and others, members of the *Societe des Compositeurs*, brought an action for damages, before the *Tribunal de Commerce*, against the managers of the theatre *des Palais Royal*, and of the *Cirque*, for having introduced into two pieces, the *Trou des Lapins* and the *Chatte Blanche*, certain airs composed by the members of the Society *des Compositeurs*. The managers invoked the assistance of the Society *des Auteurs Dramatiques*. The *Tribunal de Commerce* having decided in favor of the defendants, an appeal was taken, and after an elaborate argument, the decree was reversed and a decision made for the *Societe des Compositeurs*. The Court ruled that the music of romances, and other airs of a light character, constitute intellectual property, however trifling in value, and prohibited the managers from inserting henceforward in the plays performed at their theatres, airs borrowed from the composers without their authority. The managers were condemned each in 100 fr. damages and costs.

— A recent decision of the Court of Appeals of New York is said to have assimilated checks drawn payable at a particular day to bills of exchange, and to have decided that days of grace are to be allowed to them.

— A recent Irish paper gives the following under the title of *A Judicial Puzzle*.—One of the most comical stories of Sam Slick relates to a

trial in Nova Scotia, where a case, memorable in the annals of the Colony, was decided by the question, "How many fins has a cod?" A point of still greater difficulty arose yesterday in our Court of Criminal Appeal, before the Lord Chief Justice of the Queen's Bench, the Lord Chief Baron, and three other learned judges. It was in the form of an appeal from a conviction at the Quarter Sessions of Baltinglass, against a certain Mark Redmond and three other persons, for stealing a quantity of mutton. The evidence of stealing was that two sheep had been found in the possession of the prisoners, and Mr. Curran, who appeared as their counsel, contended that as only dead sheep were discovered, there was no proof that mutton had been stolen at all. The question came before the Court of Appeals on this issue. Is a sheep mutton? The case, to ordinary people, might appear a very simple one; but in a legal sense, it seems to be one of extreme difficulty. The Assistant Barrister at the Court below put the case to the jury thus: "They ought not to convict unless they believe that, at the time of the commission of the offence, the property charged was then actually mutton." The jury, sharing in the popular belief that sheep alive or dead are mutton, found a verdict of guilty; and it was from this conviction the appeal was brought. We learn from the report that, after a lengthened discussion between counsel on both sides and the Bench, there was such a difference of opinion amongst the Judges that the Lord Chief Justice at length adjourned the Court, leaving the knotty point for further consideration at an adjourned sitting. "As dead as mutton" has been, up to this time, an axiom in general use; but hereafter the dictum of a high legal tribunal may show that this has originated in a mere popular delusion.

THE LATE JUDGE GIBSON.

— The death of Judge Gibson, of the Supreme Court of Pennsylvania, is a notable loss to the jurisprudence of the country. He was a Judge of most extraordinary ability; no man on the Bench possessed a profounder knowledge of the law, or was gifted with a more vigorous, comprehensive, and accurate mode of stating it. The volumes of the Pennsylvania Reports contain every where the most striking proofs of his talents, and will be an enduring monument to his fame. In the course of a few months we shall be enabled, through the kindness of a gentleman of our bar, to present to our readers a biographical sketch of the late distinguished Judge. In the meantime we may be permitted to transfer to these pages

the following elegant and beautiful tribute to his memory, delivered at the session of the Supreme Court, at Harrisburg, by Chief Justice Black, on the announcement of the death of Judge Gibson.

Chief Justice Black said :—It is unnecessary to say that every surviving member of the Court is deeply grieved by the death of Mr. Justice Gibson. In the course of nature it was not to be expected that he could live much longer, for he had attained the ripe age of seventy-six. But the blow, though not a sudden, was a severe one. The intimate relations, personal and official, which we all bore to him, would have been sufficient to account for some emotion, even if he had been an ordinary man. But he was the Nestor of the Bench, whose wisdom inspired the public mind with confidence in our decisions. By this bereavement the Court has lost what no time can repair; for we shall never look upon his like again.

We regarded him more as a father than a brother. None of us ever saw the Supreme Court before he was in it; and to some of us his character as a great Judge was familiar even in childhood. The earliest knowledge of the law we had was derived in part from his luminous expositions of it. He was a Judge of the Common Pleas before the youngest of us was born, and was a member of this Court long before the oldest was admitted to the bar. For nearly a quarter of a century he was Chief Justice, and when he was nominally superseded by another, as the head of the Court, his great learning, venerable character and overshadowing reputation, still made him the only Chief whom the hearts of the people would know. In the course of his long service he discussed and decided innumerable questions. His opinions are found in no less than seventy volumes of the regular reports, from second Sergeant and Rawle to sixth Harris.

At the time of his death he had been longer in office than any cotemporary judge in the world; and in some points of character he had not his equal on the earth. Such vigor, clearness and precision of thought was never before united with the same felicity of diction. Brougham has sketched Lord Stowell justly enough, as the greatest judicial writer that England could boast of, for force and beauty of style. He selects a sentence and calls on the reader to admire the remarkable elegance of its structure. I believe that Judge Gibson never wrote an opinion in his life from which a passage might not be taken stronger, as well as more graceful in its turn of expression, than this which is selected with so much care by a most zealous friend, from *all* of Lord Stowell's.

His written language was a transcript of his mind. It gave the world

the very form and pressure of his thoughts. It was accurate, because he knew the exact boundaries of the principles he discussed. His mental design took in the whole outline and all the details of the case, and with a bold and steady hand he painted what he saw. He made others understand him, because he understood himself.

————— *Cui lecta potenter erit res,
Nec facundia deseret hunc, nec lucidus ordo.*

His style was rich, but he never turned out of his way for figures of speech. He never sacrificed sense to sound, or preferred ornament to substance. If he reasoned much by comparison, it was not to make his composition brilliant, but clear. He spoke in metaphors often, not because they were sought, but because they came to his mind unbidden. The same vein of happy illustration ran through his conversation and his private letters. I was most of all struck with it in a careless memorandum, intended when it was penned for no eye but his own. He never thought of display, and seemed totally unconscious that he had the power to make any.

His words were always precisely adapted to the subject. He said neither more nor less than just the thing he ought. He had one faculty of a great poet—that of expressing a thought in language, which could never afterwards be paraphrased. When a legal principle passed through his hands, he sent it forth clothed in a dress which fitted it so exactly, that nobody ever presumed to give it any other. Almost universally the syllabus of his opinion is a sentence from itself; and the most heedless student, in looking over Wharton's Digest, can select the cases in which Gibson delivered the judgment, as readily as he would pick gold coins out from among coppers. For this reason it is, that though he was the least voluminous writer of the court, the citations from him at the bar are more numerous than from all the rest put together.

The dignity, purity and richness of his written opinions, was by no means his highest title to admiration. The movements of his mind were as strong as they were graceful. His periods not only pleased the ear, but sunk into the mind. He never wearied the reader, but he always exhausted the subject. An opinion of his was an unbroken chain of logic, from beginning to end. His argumentation was always characterized by great power, and sometimes it rose into irresistible energy, dashing opposition to pieces with force like that of a battering ram.

He never missed the point even of a cause which had been badly argued. He separated the chaff from the wheat almost as soon as he got possession of it. The most complicated entanglement of facts and law, would be reduced to harmony under his hands. His argument was so lucid that the dullest mind could follow him with that intense pleasure which we all feel in being able to comprehend the workings of an intellect so manifestly superior.

Yet he committed errors. It is wonderful that in the course of his long service he did not commit more. A few were caused by inattention; a few by want of time; a few by preconceived notions which led him astray. When he did throw himself into the wrong side of a cause, he usually made an argument which it was much easier to overrule than to answer. With reference to his erroneous opinions, he might have used the words of Virgil, which he quoted so happily in *Eakin vs. Raub*, (12 S. & R. 346,) for another purpose—

————— *Si Pergama dextera* .
Defendi potuit, etiam hac defensa fuisset.

But he was of all men the most devoted and earnest lover of truth for its own sake. When subsequent reflection convinced him that he had been wrong, he took the first opportunity to acknowledge it. He was often the earliest to discover his own mistakes, as well as the foremost to correct them.

He was inflexibly honest. The judicial ermine was as unspotted when he laid it aside for the habiliments of the grave, as it was when he first assumed it. I do not mean to award him merely that common place integrity which it is no honor to have, but merely a disgrace to want. He was not only incorruptible, but scrupulously, delicately, conscientiously free from all willful wrong, either in thought, word or deed.

Next after his wonderful intellectual endowments, the benevolence of his heart was the most marked feature of his character. His was a most genial spirit, affectionate and kind to his friends, and magnanimous to his enemies. Benefits received by him were engraved on his memory as on a tablet of brass; injuries were written in sand. He never let the sun go down upon his wrath. A little dash of bitterness in his nature would, perhaps, have given a more consistent tone to his character, and greater activity to his mind. He lacked the quality which Dr. Johnson admired: he was *not* a good hater.