

## IN THE COURTS.

## Supreme Court Decision in Peppermint Essence Case.

## Claim of Errors on Which Repleve Was Secured for Doherty, the Bolton Falls Murderer—Executors Sustained in Case from Rockingham.

The Vermont supreme court has recently rendered a decision in a novel and interesting case under the prohibitory law. It was a Franklin county case, tried at the September term in that county before Judge Rowell. It has been facetiously known as the "peppermint essence case," because the question at issue was whether peppermint essence is an intoxicating beverage within the meaning of the statute. Judge Rowell refused to order a verdict for the respondent on the ground, as requested by his counsel, that the essence is not intoxicating, and submitted the question to the jury whether the respondent sold it for the purpose of intoxication. The respondent's counsel excepted, and the supreme court's opinion sustains Judge Rowell's decision. The finding of the court is, in substance, that if a beverage is capable of making a man drunk, and is sold and used for that purpose, it is an intoxicating beverage within the meaning of the law. The line of reasoning by which this decision is reached is interesting, and is indicated by these extracts from the opinion:

The state's evidence tended to show that the respondent owned or occupied a building in which he kept a general store and a dance hall; that on the evening in question a dance was held and during the evening the respondent's clerk sold one Kettle four or five ounce bottles of peppermint essence from a stock kept in the store, and that the respondent himself sold him three or four bottles of the essence that evening; that Kettle bought it to drink, did drink it and became intoxicated. The state conceded that the article was manufactured and used as a medicine and for culinary purposes. The respondent conceded that it contained fifty per cent or more of alcohol. It also appeared that it was used almost wholly as a carminative, but that it could be used as a beverage.

The respondent moved the court to direct a verdict that the essence was not an intoxicating liquor within the prohibition of the statute, which motion was denied and the respondent excepted. His court submitted the case to the jury with instructions that if the clerk sold the essence to the respondent, knowing, or acting as a careful and prudent man having reason to know, that he wanted it to drink and not to use as a medicine, and he did use it to drink, the respondent was guilty; and the same instruction in effect was given in respect to sales by the respondent himself, to which the respondent excepted.

The statute prohibits the sale of "spirited or intoxicating liquor, or mixed liquor, of which a part is spirituous or intoxicating," so the question is, whether this essence, manufactured solely for medicinal purposes, yet containing a sufficient amount of alcohol to produce intoxication, may, in any circumstances, come within the terms of the statute.

It was clearly the intention of the legislature, in enacting the prohibitory law, to prevent the sale of those liquors as a beverage commonly known as and called intoxicating, and in this case it is not contended by the state's attorney and was not held by the trial court that the preparation ordinarily falls within this class of beverages so that its sale is unlawful. Though this and many other articles made for medicinal, culinary and other purposes contain a large per cent of alcohol, they are not made for beverages and are not used as such. Their sale for the purpose for which they were manufactured is legitimate, while the sale of whiskey, gin, brandy and all other intoxicating liquors is unlawful. But when one of these preparations is sold for the purpose of intoxication, or the seller has reasonable cause to believe it is obtained for that purpose, the question is whether the sale is not in violation of the statute, whether the parties by their voluntary act do not take the preparation out of its legitimate use and place it in the list of intoxicating liquors.

The purpose of the statute is, by prohibiting the sale of intoxicating liquors, to prevent their use and restrain intemperance, and it is a reasonable view that when a person takes a beverage containing enough alcohol to make a man drunk, and is sold and bought for that purpose it is, by the act of the parties, given a "status" with intoxicating liquors.

The respondent's counsel relied mainly upon a decision in a Kansas case, in which the Kansas court held that medicines, preparations for the toilet and for culinary purposes, etc., prescribed by standard usage or authority, are without the statute, although they contain alcohol, and may produce intoxication; while certain other articles compounded of intoxicating liquors and other ingredients, such as bitters, cordials, etc., not known to standard authorities, may or may not be classed as intoxicating liquors, and that the question is one of fact for the jury to decide.

Our court holds, however, that the primary question at issue in the Vermont case was not before the Kansas court, and the belief is expressed that "if the case had been that a certain essence, prepared from a formula in the United States dispensary, but containing a large per cent of alcohol, had been sold with the seller's knowledge that it was bought for intoxication, and not for its legitimate purpose, we think the same decision would have been arrived at that is here announced."

Other court decisions are quoted, and the opinion then says in conclusion: "It is within the reasoning of all these cases to hold, as we do, that, though this essence was manufactured for a lawful purpose, and its sale as a medicine was not in violation of law, yet, when sold for an intoxicating beverage, containing as it did a large per cent of alcohol, its sale was, in the circumstances, a violation of the statute. The action of the court in denying the motion for a verdict in exceptions to the jury was therefore correct." The execution of Judge Rowell's sentence of the respondent was ordered.

## How and Why Doherty's Case Goes to the U. S. Supreme Court.

It was briefly stated in a news item in this paper last week that Charles Doherty, the murderer of Fred Murphy, would not be hung on Dec. 6 as directed by the Vermont supreme court, because his case was to be carried to the United States supreme court on a writ of error. It appears that seven errors are claimed

by Doherty's counsel in their assignment of errors filed with the clerk of the supreme court. Six of these errors relate to the claim set forth as to Doherty's insanity, but the main point on which his counsel rely in carrying his case to the United States supreme court is that our state supreme court, in its decision announced Nov. 1st, should have fixed the second date for Doherty's execution at some time after the session of the legislature of 1902. This claim is set up under the Vermont statute which provides that: "No person sentenced to suffer the punishment of death shall be executed previous to the first day of January next after the close of the session of the general assembly next following such sentence."

Doherty, then 28 years old, shot Fred Murphy of Westmore, three or four years younger, at Bolton Falls, near Waterbury, in February, 1899. The murder was apparently premeditated and done in cold blood. Murphy lingered for six weeks in living death, and wasted literally to a skeleton, before he died at the Mary Fletcher hospital. On Doherty's trial before Judge Watson at Montpelier the following September he was found guilty. No plea of insanity was raised, although Doherty testified in his own behalf and his brother was present throughout the trial. His counsel, Frank Purdy of Northfield and E. H. Deavitt of Montpelier, carried his case to the state supreme court on exceptions, which were overruled, and Chief Judge Taft sentenced Doherty to be hung Feb. 6, 1901. The legislature of 1900 refused to commute his sentence. A few days before the time fixed for his execution his counsel procured a stay of proceedings on the ground of newly-discovered evidence showing Doherty's insanity. The petition for a new trial was argued at the last May term, and Nov. 1st, as already said, the court announced its decision denying the petition for a new trial and fixing Dec. 6 (today) as the date of Doherty's execution.

These are the facts briefly told. It is not known how soon the case can be reached in the United States supreme court. Usually it takes two to four years to reach a case in that court, but it is customary to advance cases of this kind on the calendar. It is doubtful if Doherty's counsel have any confidence that the points raised in regard to his alleged insanity will avail. Their main hope, as said in the beginning, is undoubtedly that the United States court may say that our state court ought to have fixed the second date of execution at some day after the session of the legislature of 1902. It is to be presumed that this point was fully considered by the judges of our state supreme court. If it prevails it is evident that, by means of successive petitions for a new trial, and the consequent postponement of the dates of execution, the enforcement of the death penalty may be delayed indefinitely whenever a murderer's counsel choose to avail themselves of such a method of procedure.

An interesting case has recently been decided relating to the settlement of estates under the law of 1896. John L. and Josiah B. Divoll of Rockingham were the executors of Oscar D. Olcott's estate of that town. In its decree for distribution, the probate court allowed the widow \$300 and one-half the remainder of the estate, and also \$50 as a homestead. The executors thought this decision not in accordance with the law of 1896, and took an appeal, based solely on the question of the allowance of \$50 as a homestead. The county court held that the widow was not entitled to the \$50. Exceptions were taken and when the case came before the supreme court it was agreed by counsel that the county court's decree should be affirmed without a hearing, the decision thus being in favor of the claim of the executors. This is said to be the first case to come before the court under the act in question.

## Relations of National Guard Should Be Clearly Defined.

Secretary of War Root made the following recommendation in his recent annual report:

"The present provisions of law relating to the militia, and to the raising of volunteer forces, are quite imperfect and unsatisfactory. The militia law stands today practically as it was enacted in 1792, and is practically obsolete. It is very desirable that Congress should now exercise the power conferred upon it by the Constitution to provide for organizing, arming and disciplining the militia. The organization and armament of the National Guard of the several states, which are treated as militia in the appropriations made by Congress, should be made the same as those provided by Congress for the regular and volunteer forces. The relations of the National Guard organizations to the national forces, and the obligations and duties of those organizations in time of war should be clearly defined, so that the confusion and uncertainty regarding their action which accompanied the outbreak of the war with Spain may not again occur."

"The reliance of the country for the large force necessary in modern warfare must necessarily be chiefly upon volunteers. The method and procedure of raising volunteer forces should be prescribed in advance, so that instead of waiting to devise plans for a volunteer army until the excitement and haste of impending war make perfection of design difficult and satisfactory execution impossible, Congress will have but to direct the execution of a well understood plan by officers, each of whom has long been familiar with the part he is to play."

It is recommended that the National Guard be armed with the small arms of the regular army and treated as a first reserve to be called into service at times of military necessity or civil disorder.

## Not a "Rube."

[North Adams Transcript.]

No one who knows them at first hand will be apt to say that the Vermonters are a "Rube" when it comes to business matters, and as for other qualities such a discussion as that now being indulged in by the papers of Vermont is evidently merely offering an excuse to say nice things about one's self. Vermonters are perfectly satisfied with themselves. In the gold brick game of life they have held their end up with the rest of the world. When there is anything they want they usually get it, and get it honestly in more cases than do the majority of human beings. When there is anything to be said they know how to say it and when they have said it they know enough to stop. And when new ideas are needed by the city, Vermont usually has one tucked away in the folds of its mountainous surface, ready to be put on the market at the opportune moment. No, there are no hares to the proper self-esteem of the Green Mountain state.

## Terrible.

[Ludlow Tribune.]

What a terrible thing it would be if the Honorable Willoughby Blomfield Vill of Randolph should forget who the next governor will be before the convention!

## IN OUR OWN STATE.

## F. W. Pierce of Chester in the Awful Wreck in Seneca, Mich.

F. W. Pierce, president of the Chester savings bank, was a passenger who went through the big railroad wreck at Seneca, Mich., in which 70 lives were lost Nov. 27. Mr. Pierce, who was returning from a business trip to the northwest, was eating in the dining car when the two trains came together head on. He says the first crash sounded like the report of a cannon. He was thrown violently against the side of the car, and shock came a crushing, grinding sound, and suddenly the front of the dining car was crushed, and Mr. Smith saw a pair of human legs dangle between the two cars. On escaping from the rear door Mr. Pierce found that the day coach, containing about thirty passengers, which was between the dining car and a combination car next to the engine, had been telescoped completely, and the combination coach had burst through the front of the dining car. The legs were those of the porter who was on the platform and who was crushed to death. Mr. Pierce found Engineer Parks of the west bound train trying to bind a tourniquet of willow sticks about his leg, which was badly injured.

Mr. Pierce says: "It was almost impossible to see, and the air was full of cries for help from those caught beneath the wreckage, or lying injured. The west-bound coaches, however, soon caught fire, and lighted up the entire countryside. The shrieks of those who could not escape were soon stifled, and before morning the burning cars and their contents were reduced to ashes."

Mr. Pierce assisted Engineer Parks in various ways, carried water to put out a small fire in the east-bound train and helped rescue three women and one man from the wreckage. He worked with a few others until the officials arrived upon the scene.

## Spotter Called on Officers for Protection.

A crowd gathered around the Junction House at White River Junction Monday evening and threatened violence to S. D. Waite of Cambridge, Mass., an alleged spotter, working through the county to get evidence against persons violating the prohibitory law, gambling and other offenses. Waite was alarmed and telephoned to Officers Bruce and Davis of Norwich for protection. They came on and took him to Woodstock. Considerable excitement prevailed. Waite is said to have been informed in several cases where officers recently raided and made arrests in Windsor county.

## Col. Kimball's Offer of a Library Accepted.

At the special town meeting held at Randolph Saturday to consider the matter of accepting the gift of a \$10,000 library building from Col. Robert J. Kimball, and a site on Main street bought by the village district and offered to the town, a unanimous vote was taken to accept both gifts.

There was only good feeling shown among the voters, and gratitude to Col. Kimball, who will probably come to Randolph this week with an architect from Lowell, Mass., to begin preparations for the work. Col. Kimball plans to have the library completed and dedicated in autumn of next year.

## Valuable Gift to Norwich University.

The library of the late Rev. Orland Dana Miller, considered one of the largest, rarest and most valuable in New Hampshire, has been given to Norwich University by the daughters of the deceased, Lizzie B. and Eva B. Miller of South Ferrisburgh. Dr. Miller was a graduate of Norwich, class of 1845. The library includes several thousand volumes collected during the lifetime of the owner who was a scholar of wide reputation. It will be placed in Dewey Hall.

Charles A. Sumner, 76, for many years prominently connected with the banking interests of Burlington, died suddenly Saturday afternoon.

The Lincoln Lumber company's butter tub factory was burned Thursday evening. The building was 10x30 feet and two stories high. The loss is estimated at \$14,000; insurance \$6,000.

A young man named Luxford, who lived two miles from Newport Centre on the Troy road, was cutting down a tree, when a dead limb fell, striking him on the head and killing him instantly. Luxford was the only support of an aged mother.

Rev. John P. Farrar, 77, who died suddenly from heart disease in Lynn, Mass., Sunday, was elected superintendent of schools in Wallingford in 1871 and from 1872 to 1875 was president of the board of directors of Black River Academy in Ludlow.

Levi Demars, 23, of St. Albans, was killed Friday by the accidental discharge of his gun. He was employed by Archie Vandell at Isle La Motte, and in attempting to push a boat from shore in his haste to get a shot at ducks the gun was discharged, the shot piercing his abdomen.

Dr. Hoyt R. Wilder, 53 years, died Monday at Burlington after a month's illness. He was born at Shieldfield. He had been president of the State Medical society, and also of the Franklin county medical society. He came to Burlington in 1890, after being located for 25 years at Swanton. His wife died in September. Three sons and one daughter survive.

F. J. White, manager of the Lumiere North American company, who arrived at Burlington Saturday from Lyons, France, brought with him plans and specifications for buildings and equipments to cost \$100,000, work upon which is soon to begin at Howard park, in that city. The product of that plant will be photographic dry plates and photographic paper. The head office of the company will be in Burlington, with branches in Boston, New York, Chicago and other large cities.

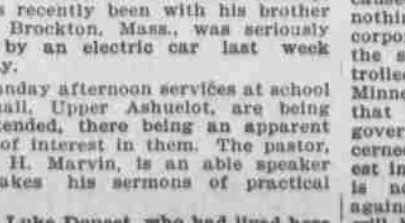
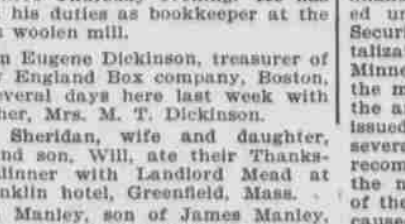
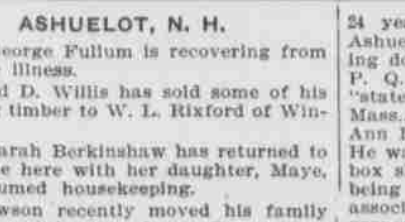
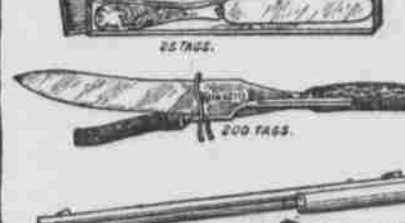
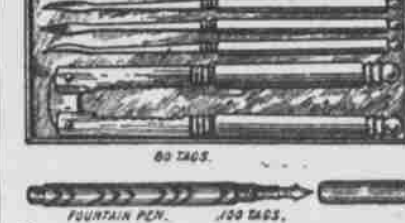
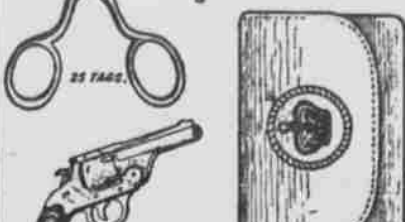
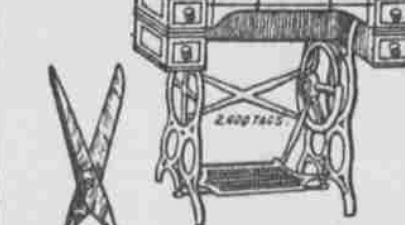
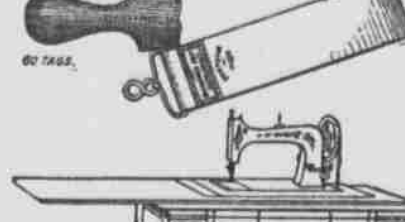
James Hale Bates, who died in Brookline Friday, was born in Proctorville in the early thirties. After graduating from the University of Michigan he began his business career in New York, where he was planner in starting the mercantile registry and newspaper advertising business. He was for some years a partner of David Ross Locke (Petroleum V. Nobby), under the style of Bates & Locke. Later the firm was J. H. Bates & Co., when Mr. Locke went to Ohio to engage in newspaper enterprises, and in some of these Mr. Bates became interested. The Lyman D. Morse advertising agency succeeded in the business. Mr. Bates had literary leanings, and often wrote for the press in both prose and verse. He was a ready expression, in no respect ambitious, but he wrote with unpretentious ease upon such matters as interested him. He was an officer in several financial and social organizations in Brookline, and was a member in residence near Proctorville and always maintained an interest in Vermont affairs.

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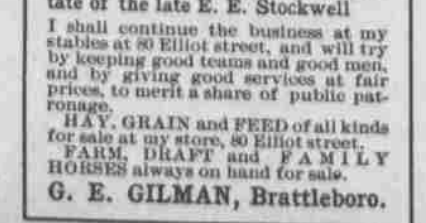
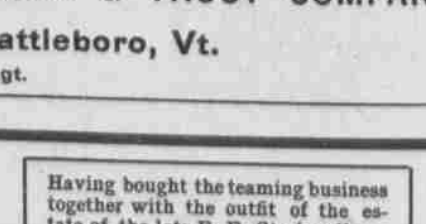
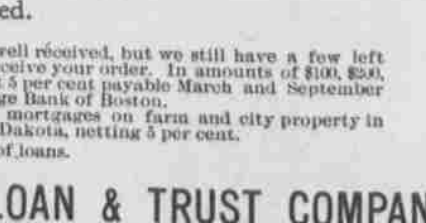
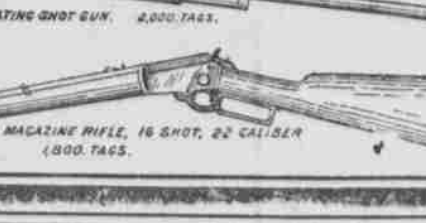
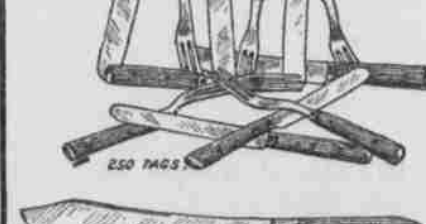
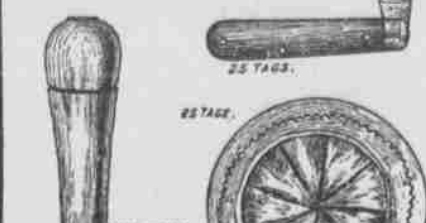
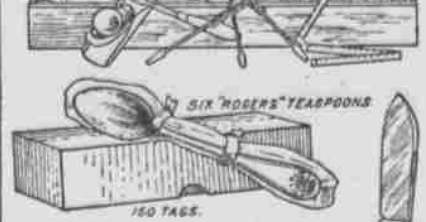
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