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THE growth of the conviction that a course of legal study, under the conditions of the modern university, may of itself be deemed a form of liberal education, is strikingly manifested by a recent change in the policy of the German empire. Heretofore no university student could be matriculated there as a candidate for the degree of *Juris Utriusque Doctor* who was not a graduate of gymnasium, or some other institution of like or higher character. It is now officially announced that law students in Germany need no longer hold a certificate from a classical gymnasium, but may be graduates of the *Realgynmasia* or higher *Realschulen.*

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UNDER the heading, "Contemporary Foreign Review" the *Law Magazine and Review,* of England, publishes the following by James Williams, D.C.L., LL.D., concerning the YALE LAW JOURNAL:

"This monthly magazine is well worth the attention of readers of the *Law Magazine and Review,* as being the production of young graduates and even undergraduates of Yale, with occasional help in the shape of articles by more seasoned members of the profession. It is in every way a credit to

the Yale Law School. One can only regret the absence of such a periodical in the English Universities. No doubt the differences in the method of the study of law account to some extent for such absence. The main differences are two (1) We have in England very rarely, if at all, anyone who is engaged in active professional or judicial work filling the place of an academic teacher. This is by no means unusual in America. At Yale, for instance, the Hon. Simeon E. Baldwin, a judge of the Court of Errors of Connecticut, is Professor of Constitutional and Private International Law, and Mr. Thacher, one of the leaders of the New York bar, is Lecturer on Corporate Trusts. The effect of this is no doubt to bring the students more into touch with actual practice and so enable them to conduct a magazine which contains *inter alia* a digest of recent cases. (2) In the English Universities, as a rule, a certain list of subjects for examination is published. As long as the student is prepared for the examination, it is generally competent for the tutor to deal with subjects in any order and accommodate himself to the class of mind of the pupil. It is an elastic system. The American system is inelastic. The learning is fixed in strata. The books read in the first year are marked off from those read in the second year. It may be that this system leads to more definite knowledge than ours.

"It may be of some interest to note that at Yale the degrees of B.C.L. and D.C.L. are given with more logical precision than at Oxford. They are reserved for proficiency in Civil Law, or analogous subjects, such as Admiralty or foreign law, and so are comparatively rare. The degrees given after the ordinary law course are those of LL.B., M.L. and LL.D. Surely this is more logical than the Oxford system, in which there is much more English than Roman law in the B.C.L. examination, and in which a thesis on a Roman law subject for the D.C.L. degree has been of late years almost unknown."

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IN Professor Sprague's article on "Alleged Blunders in Shakespeare's Legal Terminology," in our April issue, the word *property* was misprinted "prosperity," (fourth line from top of p. 316).

COMMENT.

INJUNCTIONS TO RESTRAIN LIBELOUS PUBLICATIONS.

The subject of equitable jurisdiction over libelous publications has received very little attention from writers on equity jurisprudence. In fact, most authorities devote but a scant paragraph to this branch of equity, and are unanimous in declaring that no such jurisdiction exists. This lack of consideration is, no doubt, due to the fact that under the early decisions it was well established that equity had no power to restrain publications of a libelous nature and that the only remedy to the injured party was an action at law.

That at the present time, however, no such hard and fast rule can be laid down on this subject is clearly shown by the recent decision of the Supreme Court of New York in the case of *Marlin Firearms Co. v Shields,* 74 N. Y. Supp., 84.

In this case the complainant, a manufacturer of firearms, brought a bill in equity praying for an injunction to restrain the defendant, the owner and editor of a monthly magazine called "Recreation," from publishing certain false and fictitious letters, purporting to come from sportsmen, specifying certain defects which do not in fact exist, in the firearm manufactured by the complainant. The court issued the injunction on the ground that a court of chancery possessed power to restrain a publication by injunction, if it appeared that the intended publication would work destruction of property or inflict irreparable injury thereto.

Before deciding whether this decision is sanctioned by the weight of authority, it is advisable to review briefly the development of the subject in the equity courts. To quote from *High on Injunctions,*— "Upon the question of preventive relief in equity against the publication of libelous statements, affecting the character or business of the plaintiff, the authorities, both English and American, indicate a noticeable want of uniformity, and are indeed wholly irreconcilable."

While this statement is substantially true, the apparent lack of uniformity in the English decisions is not difficult to explain. By a long line of decisions culminating in *Prudential Assurance Co. v. Knott,* L. R., 10 Ch., 142, the English Court of Chancery consistently held that they had no power to restrain the publication of libels even though such publications were calculated to injure the credit, business or character of the person aggrieved. It is true that Malins, V. C., expressed a contrary opinion in a few cases (*Springhead Spinning Co. v. Riley,* L. R., 6 Eq., 551; *Dixon v. Holden,* L. R., 13 Eq., 355), but these decisions were speedily overruled and have been pronounced too inconsistent to merit discussion.

By the Judicature Act of 1873, the Chancery Court, as a division of the High Court of Justice, was given the power to issue injunctions to prevent libelous publications. It is, therefore, from this act of Parliament that the Chancery Court derived the power which it exercised in the case of *Thorley Cattle Co. v. Massam,* 14 Ch. D., 763, by restraining the publication of libelous advertisements, the effect of which was to ruin the marketable value of the complainant's goods. Upon the authority of this case and the later case of *Quartz Hill Co. v. Beall,* 20 Ch. Div., 501, it may be stated that in England the Chancery Court will prevent by injunction the publication of

any false statements which are calculated to injure the plaintiffs in their property or business.

In America, the equity courts have not been aided by legislative enactment, and it is therefore more difficult to reconcile the cases. However, there are two principles which may be taken as firmly established. The first is that false representations which merely amount to the slander of the name or reputation of another or are calculated to bring the name or reputation of another into contempt, do not furnish a ground for the interposition of a court of equity, for this court has no power to suspend or abridge "the right of every person to freely speak, write or print on any subject." *Vide, Brandreth v. Lance,* 8 Paige (N. Y.), 368; *Assoc. v. Boogher,* 3 Mo. App., 173; *Boston Diatite Co. v. Florence Mfg. Co.,* 114 Mass., 69. The second is that equity will enjoin the publication and circulation of posters, hand-bills and circulars printed and circulated for the purpose of *intimidating* persons and thereby injuring and destroying the business of another. *Vide, Emack v. Kane,* 34 Fed. Rep., 47; *Casey v. Union,* 45 Fed. Rep., 135; *Vegelahn v. Guntner,* 167 Mass., 92.

If a case can be placed within either of these principles, all difficulty is avoided. When, however, the case presented has some of the features of each of the above classes of cases, but cannot be brought squarely within either, the decisions are irreconcilable.

The New York Supreme Court decided that the facts of the case at bar brought it within the second of these principles and base their decision upon the authority of *Emack v. Kane, supra.*

After a study of this case and the cases cited in the opinion, it is difficult to understand how the Court could have come to this conclusion. In *Emack v. Kane,* as in all the other cases cited, the material and vital features are the *intimidation* of third parties and the combination or conspiracy to boycott the complainant. These features are wanting in the case at bar.

The Court quotes from the opinion of Judge Blodgett in *Emack v. Kane,* as follows: "It shocks my sense of justice to say that a court of equity cannot restrain systematic and methodical outrages like this by one man upon another's property rights. If a court of equity cannot restrain an attack like this upon a man's business, then the party is certainly remediless, because an action at law, in most cases, would do no good, and ruin would be accomplished before an adjudication would be reached." This statement, however, must be read in the light of the particular facts of the case then under consideration and is no more applicable to the case at bar

than it would be to any case involving a libelous publication. While it is true, doubtless, that irreparable injury will be done to the complainant and that it will be impracticable to ascertain the amount of the damages, yet, in former cases, courts of high authority have refused to base equitable jurisdiction of libels upon such grounds. *Francis v. Flinn,* 118 U. S., 385; *Boston Diatite Co. v. Florence Mfg. Co., supra; DeWick v. Dobson,* 18 N. Y. App. Div. 399.

This case of *Marlin Firearms Co. v. Shields,* seems, in all material features, to be analogous to the case of *Kidd v. Horry,* 28 Fed. Rep., 773, in which the Court denied an application for an injunction to restrain the defendant from publishing certain circulars alleged to be libelous and injurious to the complainant's patent-rights and business, and from making libelous and slanderous statements concerning complainant's business. This case has been cited with approval and followed by the N. Y. App. Div. in case of *DeWick v. Dobson, supra,* decided in June, 1897.

In *Bell v. Singer Co.,* 65 Ga., 459, Justice Harkins says: "We recognize the rule that a court of equity, upon a proper case, has power to enjoin the publication and circulation of a libel." This statement, however, was mere *obiter dictum,* since the injunction was denied in that case.

Therefore, if this case is brought up on appeal, as it doubtless will be, it is difficult to see how the present decision can be affirmed, unless the Court depart from the doctrines established by the weight of authority in this country.

It is to be hoped that the Court will make this departure, for however wanting the present decision may be in the support of adjudicated cases, it is consonant with the principles of common sense and justice, which have always been regarded as the cardinal principles of equity jurisprudence.