

XIII

MISCELLANEA

IF the "Great Star-Catalogue Case" is not surrounded with such mystery as would entitle it to a place among *causes célèbres*, it may well be so classed on account of the novelty of the questions at issue. It affords an instructive example of the possibility of cases in which strict justice cannot be done through the established forms of legal procedure. It is also of scientific interest because, although the question was a novel one to come before a court, it belongs to a class which every leader in scientific investigation must constantly encounter in meting out due credit to his assistants.

The plaintiff, Christian H. F. Peters, was a Dane by birth, and graduated at the University of Berlin in 1836. During the earlier years of his manhood he was engaged in the trigonometrical survey of the kingdom of Naples, where, for a time, he had charge of an observatory or some other astronomical station. It is said that, like many other able European youth of the period, he was implicated in the revolution of 1848, and had to flee the kingdom in consequence. Five years later, he came to the United States. Here his first patron

was Dr. B. A. Gould, who procured for him first a position on the Coast Survey, and then one as his assistant at the Dudley Observatory in Albany. He was soon afterward appointed professor of astronomy and director of the Litchfield Observatory at Hamilton College, where he spent the remaining thirty years of his life. He was a man of great learning, not only in subjects pertaining to astronomy, but in ancient and modern languages. The means at his disposal were naturally of the slenderest kind; but he was the discoverer of some forty asteroids, and devoted himself to various astronomical works and researches with great ability.

Of his personality it may be said that it was extremely agreeable so long as no important differences arose. What it would be in such a case can be judged by what follows. Those traits of character which in men like him may be smoothed down to a greater or less extent by marital discipline were, in the absence of any such agency, maintained in all their strength to his latest years.

The defendant, Charles A. Borst, was a graduate of the college and had been a favorite pupil of Peters. He was a man of extraordinary energy and working capacity, ready to take hold in a business-like way of any problem presented to him, but not an adept at making problems for himself. His power of assimilating learning was unusually developed; and this, combined with orderly business habits, made him a most effective and valuable

assistant. The terms of his employment were of the first importance in the case. Mr. Litchfield of New York was the patron of the observatory; he had given the trustees of Hamilton College a capital for its support, which sufficed to pay the small salary of the director and some current expenses, and he also, when the latter needed an assistant, made provision for his employment. It appears that, in the case of Borst, Peters frequently paid his salary for considerable periods at a time, which sums were afterward reimbursed to him by Mr. Litchfield.

I shall endeavor to state the most essential facts involved as they appear from a combination of the sometimes widely different claims of the two parties, with the hope of showing fairly what they were, but without expecting to satisfy a partisan of either side. Where an important difference of statement is irreconcilable, I shall point it out.

In his observations of asteroids Peters was continually obliged to search through the pages of astronomical literature to find whether the stars he was using in observation had ever been catalogued. He long thought that it would be a good piece of work to search all the astronomical journals and miscellaneous collections of observations with a view of making a complete catalogue of the positions of the thousands of stars which they contained, and publishing it in a single volume for the use of astronomers situated as he was. The work of doing this was little more than one of routine

search and calculation, which any well-trained youth could take up; but it was naturally quite without the power of Peters to carry it through with his own hand. He had employed at least one former assistant on the work, Professor John G. Porter, but very little progress was made. Now, however, he had a man with the persistence and working capacity necessary to carry out the plan.

There was an irreconcilable difference between the two parties as to the terms on which Borst went to work. According to the latter, Peters suggested to him the credit which a young man would gain as one of the motives for taking up the job. But plaintiff denied that he had done anything more than order him to do it. He did not, however, make it clear why an assistant at the Litchfield Observatory should be officially ordered to do a piece of work for the use of astronomy generally, and having no special connection with the Litchfield Observatory.

However this may be, Borst went vigorously to work, repeating all the calculations which had been made by Peters and former assistants, with a view of detecting errors, and took the work home with him in order that his sisters might make a great mass of supplementary calculations which, though not involved in the original plan, would be very conducive to the usefulness of the result. One or two of these bright young ladies worked for about a year at the job. How far Peters was privy to what they did was not clear; according to his

claim he did not authorize their employment to do anything but copy the catalogue.

By the joint efforts of the assistant and his two sisters, working mostly or entirely at their own home, the work was brought substantially to a conclusion about the beginning of 1888. Borst then reported the completion to his chief and submitted a proposed title-page, which represented that the work was performed by Charles A. Borst under the direction of Christian H. F. Peters, Professor of Astronomy, etc. According to Borst's account, Peters tore up the paper, opened the stove door, put the fragments into the fire, and then turned on the assistant with the simple order, "Bring me the catalogue!"

This was refused, and a suit in replevin was immediately instituted by Peters. The ablest counsel were engaged on both sides. That of the plaintiff was Mr. Elihu Root, of New York, afterward Secretary of War, one of the leading members of the New York bar, and well known as an active member of the reform branch of the Republican party of that city. For the defendant was the law firm of an ex-senator of the United States, the Messrs. Kernan of Utica.

I think the taking of evidence and the hearing of arguments occupied more than a week. One claim of the defendant would, if accepted, have brought the suit to a speedy end. Peters was an employee of the corporation of Hamilton College, and by the terms of his appointment all his work

at the Litchfield Observatory belonged to that institution. Borst was summoned into the case as an official employee of the Litchfield Observatory. Therefore the corporation of the college was the only authority which had power to bring the suit. But this point was disposed of by a decision of the judge that it was not reasonable, in view of the low salary received by the plaintiff, to deprive him of the right to the creations of his own talent. He did not, however, apply this principle of legal interpretation to the case of the defendant, and not only found for the plaintiff, but awarded damages based on the supposed value of the work, including, if I understand the case aright, the value of the work done by the young ladies. It would seem, however, that in officially perfecting the details of his decision he left it a little indefinite as to what papers the plaintiff was entitled to, it being very difficult to describe in detail papers many of which he had never seen. Altogether it may be feared that the decision treated the catalogue much as the infant was treated by the decision of Solomon.

However this might be, the decision completely denied any right of the defendant in the work. This feature of it I thought very unjust, and published in a Utica paper a review of the case in terms not quite so judicial as I ought to have chosen. I should have thought such a criticism quite a breach of propriety, and therefore would never have ventured upon it but for an eminent example then fresh in my mind.

Shortly after the Supreme Court of the United States uttered its celebrated decision upholding the constitutionality of the Legal Tender Act, I happened to be conversing at an afternoon reception with one of the judges, Gray, who had sustained the decision. Mr. George Bancroft, the historian, stepped up, and quite surprised me by expressing to the judge in quite vigorous language his strong dissent from the decision. He soon afterward published a pamphlet reviewing it adversely. I supposed that what Mr. Bancroft might do with a decision of the Supreme Court of the United States, a humbler individual might be allowed to do with the decision of a local New York judge.

The defense appealed the case to a higher court of three judges, where the finding of the lower court was sustained by a majority of two to one. It was then carried to the Court of Appeals, the highest in the State. Here the decision was set aside on what seemed to me the common sense ground that the court had ignored the rights of the defendant in the case, who certainly had some, and it must therefore be remanded for a new trial.

Meantime Peters had died ; and it is painful to think that his death may have been accelerated by the annoyances growing out of the suit. One morning, in the summer of 1890, he was found dead on the steps of his little dwelling, having apparently fallen in a fit of apoplexy or heart failure as he was on his way to the observatory the night before. His heirs had no possible object in push-

ing the suit ; probably his entire little fortune was absorbed in the attendant expenses.

When the difference with Borst was first heard of it was, I think, proposed to Peters by several of his friends, including myself, that the matter should be submitted to an arbitration of astronomers. But he would listen to nothing of the sort. He was determined to enforce his legal rights by legal measures. A court of law was, in such a case, at an enormous disadvantage, as compared with an astronomical board of arbitration. To the latter all the circumstances would have been familiar and simple, while the voluminous evidence, elucidated as it was by the arguments of counsel on the two sides, failed to completely enlighten the court on the points at issue. One circumstance will illustrate this. Some allusion was made during the trial to Peters's work while he was abroad, in investigating the various manuscripts of the *Almagest* of Ptolemy and preparing a commentary and revised edition of Ptolemy's *Catalogue of Stars*. This would have been an extremely important and original work, most valuable in the history of ancient astronomy. But the judge got it mixed up in his mind with the work before the court, and actually supposed that Peters spent his time in Europe in searching ancient manuscripts to get material for the catalogue in question. He also attributed great importance to the conception of the catalogue, forgetting that, to use the simile of a writer in the "*New York Evening Post*," such a conception was of no more value

than the conception of a railroad from one town to another by a man who had no capital to build it. No original investigation was required on one side or the other. It was simply a huge piece of work done by a young man with help from his sisters, suggested by Peters, and now and then revised by him in its details. It seemed to me that the solution offered by Borst was eminently proper, and I was willing to say so, probably at the expense of Peters's friendship, on which I set a high value.

I have always regarded the work on Ptolemy's catalogue of stars, to which allusion has just been made, as the most important Peters ever undertook. It comprised a critical examination and comparison of all the manuscripts of the *Almagest* in the libraries of Europe, or elsewhere, whether in Arabic or other languages, with a view of learning what light might be thrown on the doubtful questions growing out of Ptolemy's work. At the Litchfield Observatory I had an opportunity of examining the work, especially the extended commentaries on special points, and was so impressed by the learning shown in the research as to express a desire for its speedy completion and publication. In fact, Peters had already made one or more communications to the National Academy of Sciences on the subject, which were supposed to be equivalent to presenting the work to the academy for publication. But before the academy put in any claim for the manuscript, Mr. E. B. Knobel of Lon-