Feby 6th 1878.

OIL, PAINT AND DRUG REPORTER.

MASURY VERSUS GANTERT.

We have had the satisfaction of looking at the record of the trial of J. W. Masury & Son versus Paul Gantert. We say satisfaction, for without the record evidence we should otherwise never have been able to comprehend how it may be that a given result in Court as to a question of law and fact may be utterly at variance with right and common sense.

The gist of the matter is that in February, 1876, Messrs. Masury & Son sold through J. G. Darrington, their representative, to Gantert some 3,500 pounds of white lead at nine cents per pound. On the suggestion of Mr. G. that this was below the market price, Mr. Darrington said they wished to give him (Gantert) a special inducement for the purpose of securing his custom. But Mr. Gantert still hesitating, required a written warranty as to its purity. This document reads as follows:

NEW YORK, March 1st, 1876.

The lead bought from J. W. Masury & Son by Mr. Paul Gantert is as we represented and warranted, *Pure Lead.* J. W. MASURY & SON,
per J. G. Darrington.

It turned out that the lead was adulterated with about thirty per cent of barytes, as appeared by a scientific analysis by Prof. Ricketts, of the School of Mines. Mr. Gantert at once notified Masury and returned all of the lead except what he had sold, and by reason of which he had been obliged to endure the maledictions of his customers. Masury sued Gantert for his bill in the Marine Court (which, we infer, is given this nautical appellation because it is generally afloat on a sea of uncertainty and confusion — at least this record would justify such an inference). It lately came to trial. The delivery of the lead was admitted; and Mr. Gantert proved the failure of the contract by showing that the lead was not pure, although the judge refused to admit the scientific analysis of Prof. Ricketts, because he was not present to verify it. He also excluded the evidence of damages by reason of loss of business with his customers to whom he had sold the lead, and who were of course incensed against Mr. Gantert for selling them impure lead. The judge held that the only measure of damages was the difference between the price of pure lead and the price at which it was sold. One might think that this was a clerical error, but the same ruling is at a later stage made in the same words.

The upshot of the matter was that the judge having overruled the defences of Mr. Gantert, Mr. Masury thought it best to take a verdict upon the testimony of the defendant and under an implied admission of the impurity of the lead, and by direction of the judge, who probably having been corrected by the plaintiff's attorney as to the question of damages, the jury found for the plaintiff $135.76, which was supposed to be the value of the lead less the barytes. In other words, Mr. Masury was content to take a verdict for that portion of the lead which Gantert could not return, it having been used by his incensed customers, at the price of five cents per pound. As Mr. Masury is a wise man, we may infer that it was wisdom on his part to avoid the necessity of proving that the lead in question was *pure*, as he warranted it. And although Mr. Gantert might well feel aggrieved that he should be compelled to pay anything for lead adulterated with thirty per cent of barytes, and which was warranted pure, and which was of so much damage to him, yet we understand that since he has established the main fact he is content to abide the result, rather than trust himself to the nautical uncertainties incident to further litigation in the Marine Court. Mr. Gantert says he is willing to pay five cents per pound, as he thinks it was worth that for the lead at least. He claims, too, that he gained a substantial victory over Messrs. Masury & Son, as the Court ruled that the lead was worth only five cents per pound, and the result would go to show that manufacturers could not sell impure lead as the genuine article with impunity. He suggests, too, that their submission to this verdict on his own testimony alone, is a virtual admission of their guilt, although they had the hardihood to repudiate the authority of Darrington, their salesman and representative.

The analysis of Prof. Ricketts is as follows:

NEW YORK, March 30th, 1876.

Certificate of Analysis.

Dear Sir: The sample of white paint, from ——, Marked "No. 3," submitted to me for examination, contains

	Per cent.
White lead	64.96
Barytes	26.12
Oxide of zinc	2.24
Volatile matter, oil, etc.	4.23
Undetermined impurities	2.34
Total	100.00

	oz.
White lead, per pound	10.3904
Barytes, "	4.1792
Oxide of zinc per pound	.3776
Volatile matter, etc. per pound	.6768
Undetermined impurities, per pound	.3744
Total	16.000

Very respectfully,
F. D. P. RICKETTS, E. M.

To PAUL GANTERT,
New York.