ANTI-LIQUOR LAW.

Draft of a Bill for the Suppression of the Traffic in Intoxicating Liquors.

Reported to the New-York State Temperance Alliance, by their Executive Committee, Jan. 20, 1853.

AN ACT in Relation to the Manufacture and Sale of Intoxicating Liquor.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

§ 1. No person shall hereafter, either personally or by his clerk, servant, agent or partner, directly or indirectly manufacture or sell any intoxicating liquor, unless he shall have filed in the office of the Clerk of the County in which such liquor is to be manufactured or sold, an undertaking executed by himself with two good and sufficient sureties to be approved by the County Judge of the same County, or in the City of New-York by one of the Judges of the Court of Common Pleas, and acknowledged or proved before some officer authorized to take acknowledgment of deeds, that he will pay all damages and costs which may be recovered against him in any action to be commenced under any provision of this act, nor unless he shall have exhibited in a conspicuous place upon the outside of the front of the building where such liquor is manufactured, or sold, or kept for sale, near the principal entrance to such building and not less than five feet nor more than fifteen feet above the surface of the ground, a sign upon which is painted in conspicuous Roman letters the name of such person and the words "authorized to manufacture" (or "to sell," as the case may be,) "intoxicating liquors according to law."

§ 2. Any person authorized as in the last section prescribed, may sell intoxicating liquors in the following cases and no other:

1. Upon the certificate of a practicing physician, residing in the County where such liquor is sold or in an adjoining County, that the same is absolutely necessary for the use of some person upon whom he is actually in attendance as such physician, and in every such certificate shall be stated the name and residence of such person, and the kind and quantity of liquor required, and the date of the giving thereof, and the same shall be subscribed by the physician with his name and place of residence.

2. Upon the written order of any manufacturer, mechanic, artist or chemist, specifying the kind and quantity of liquor required, and stating that the same is necessary in the manufacture, trade, art or business of the person giving such order, and subscribed by such person with his name and place of business. But no liquor shall be sold upon any such order unless the person to whom the same is presented to be supplied shall have in his possession a certificate under seal by the County Clerk of the County in which the manufacture, trade, art or business of the person giving such order has filed in the office of said Clerk a written affidavit or affirmation taken before some officer authorized to administer oaths, that he is engaged in some manufacture, trade, art or business, in the prosecution of which intoxicating liquor is necessary for use in some other way than as a beverage; and in every such affidavit or affirmation shall be specified the kind of such manufacture, trade, art or business, the place where the same is carried on, the residence of the person or persons engaged therein, and the kind of liquor necessary for use therein.

3. Upon the written order of any clergyman or church officer residing in the County in which such liquor is sold, or in an adjoining County, stating that the same is required for sacramental purposes in the church of which the person giving such order is the minister or officer, and specifying the name and location of the church and the quantity of liquor required, and subscribed with the name and residence of the person giving the same.

4. Upon the written order of any person who shall have executed and filed the undertaking prescribed by the first section of this act, provided the person by whom such liquor is sold shall have in his possession a certificate under seal by the County Clerk of the County in which such undertaking is filed, that the same is on file in his office, and has been duly executed and approved as in said section required. And in such order shall be specified the kind and quantity of the liquor required, and the same shall be subscribed by the person giving the same with his name and place of business.

§ 3. Every person who shall manufacture or sell, or have or keep in his possession with intent to sell, any intoxicating liquor in violation of any provision of either of the preceding sections of this act, shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be punished as follows:

For the first offense by a fine of not less than $10 nor more than $25.

For the second offense by a fine of not less $25 nor more than $50.

For the third and every subsequent offense by a fine of not less than $50 nor more than $250, and by imprisonment for not less than three months nor more than six months.

In default of payment of any fine imposed under this section, the defendant shall be committed until the same is paid, not exceeding two days for each dollar of the fine imposed.

§ 4. Whenever any person shall be convicted of the second or any subsequent offense against any provision of the preceding sections, it shall be the duty of the Court before which such conviction is had to require of the defendant to enter into an undertaking in such sum not less than $100 nor more than $1,000, as shall be fixed by the Court, with sufficient sureties to be approved by the Court, for his good behavior for the term of one year, and to commit the defendant until such undertaking be given. Every such undertaking shall be filed in the office of the Clerk of the County within which such conviction is had, within thirty days after the same is given. A subsequent conviction of any offense specified in the third section shall constitute a breach of such undertaking.

§ 5. Any Justice of the Peace, Police Justice, or any Judge or Justice of any inferior Court exercising the criminal jurisdiction of a Justice of the Peace, and any Mayor, Recorder, or Alderman of any City is hereby authorized to hold a Court for the trial of offences specified in the third section, and to hear, try, and determine charges for such offences and to punish the persons convicted thereof, as provided in said section and for such purposes where no special provision is otherwise made by law, such Court shall be vested with all the necessary powers which are possessed by Courts of Record in this State. No such magistrate shall be required to take the examination of any person brought before him charged with any such offence.

§ 6. Whenever any person charged with any such offense shall be brought before any such Magistrate, a complaint in writing and upon oath shall be taken by the Magistrate, unless such person shall have been arrested upon a warrant. The charge as thus taken or as stated in the warrant shall be read to the defendant, and he shall be required to plead thereto. If he plead not guilty, the Court shall proceed to try such issue and to determine the same upon the evidence produced against and in behalf of the defendant. Adjournments may be granted for good cause shown, but such adjournments shall not in the whole exceed ten days. In default of bail to appear and abide the judgment of the Court the defendant shall be committed. At the time of joining issue the defendant may demand that the same be tried by a Jury and thereupon the like proceedings shall be had as are provided by law in relation to trials by Jury before Courts of Special Sessions. The complaining witness may appear upon trial with or without counsel and prosecute the complaint in behalf of the people of this State. The Court shall keep minutes of the proceedings, testimony and judgment, which shall be subscribed by the Magistrate holding such Court.

§ 7. Two or more such offences may be charged by the same complainant in any complaint or warrant against the same person or persons, and shall be tried at the same time, and the person or persons charged shall be punished for each offence of which he or they shall be convicted as upon separate convictions, but such offences shall all be considered as of the same degree.

§ 8. Whenever it shall appear to the Court before which any such complaint is pending, before or during the trial or after conviction and before sentence, that the defendant has been before convicted of any such offence in any Court in this State, a suggestion thereof shall be entered upon the minutes and judgment shall be rendered upon such complaint for the second or third offence, as the case may be, notwithstanding the same shall not have been charged as such. Notice of the entry of such suggestion shall be given to the defendant, and he shall be required to answer thereto. If issue be joined thereupon, the same shall be tried in the same manner as the issue joined on the complaint. At the time of joining issue the defendant may demand that the same be tried by a jury.

§ 9. A certificate under the hand of any Magistrate stating any such offense charged against any person, and the conviction and judgment thereon, shall be evidence to all courts and places of the facts stated therein. But no such certificate shall be entitled to be read in evidence in any other county than that in which such Magistrate shall reside, unless there shall be subjoined thereto a certificate under the hand and official seal of the Clerk of the City or County where such Magistrate resides, that such Magistrate, at the time of such conviction, was duly qualified and acting as such Magistrate, and that such Clerk is well acquainted with the handwriting of such Magistrate, and verily believes that the signature to such certificate of conviction is genuine.

§ 10. Any person convicted of any offense as herein before provided may, within ten days after his conviction, give written notice to the Magistrate before whom he was convicted that he intends to appeal to the Court of Sessions of the County in which such conviction was had; and thereupon it shall be the duty of such Magistrate to take from such person, if the same be offered, an undertaking in such sum not less than one hundred dollars, nor more than five hundred dollars, as shall be fixed by such Magistrate, with good sureties or surety to be approved by such Magistrate, that he will appear before the Court of Sessions at the next term thereof, and abide its judgment or order upon such appeal. Upon receiving such notice, such Magistrate shall forthwith cause the minutes of the trial and conviction taken by him together with such undertaking, if the same be given, to be filed in the office of the County Clerk. Upon receiving such undertaking, such Magistrate shall suspend the execution of the sentence upon such conviction. If the defendant be imprisoned in pursuance of such conviction, such Magistrate shall give a certificate that such undertaking has been given, and upon the production thereof to the keeper of the prison the defendant shall be discharged. The Court of Sessions shall hear and determine such appeal upon the minutes filed in the office of the County Clerk as herein provided. No judgment which shall have been rendered upon the verdict of a jury shall be set aside as against evidence. If the judgment appealed from be affirmed, the defendant may, within ten days thereafter, apply to any Justice of the Supreme Court for an order to remove such conviction and judgment of affirmance into the Supreme Court for review. Such application shall be made upon affidavit, setting forth the ground thereof. No such application shall be granted unless the defendant shall execute, with good and sufficient sureties, to be approved by the Justice to whom the same is made, an undertaking in such sum as shall be fixed by such Justice, that he will appear before the Supreme Court at the next general term thereof, to be held in the district within which such conviction was had, and abide its judgment or order upon such review. Such application and order allowing the same and such undertaking shall be forthwith filed in the office of the Clerk of the County in which such conviction was had. It shall be the duty of such Clerk to send such order, together with the minutes of the Court in which such conviction was had, and a certified copy of the judgment of the Court of Sessions to the office of the Clerk of the County in which the next general term of the Supreme Court in the same District is to be held before the time of holding such Court. After the decision of the Supreme Court thereupon, said minutes and order shall be returned to the office of the Clerk of the County in which the conviction was had and the judgment of the Supreme Court shall be entered in the same County. The judgment of the Supreme Court shall be final. It shall be the duty of the District Attorney of the County in which such conviction was had to appear on behalf of the People upon such appeal and review. Upon judgment of affirmance there shall be allowed and included therein such sum as the Court may deem reasonable, not exceeding thirty dollars in the Court of Sessions, nor fifty dollars in the Supreme Court, which shall be received by the District Attorney to his own use, and in default of payment thereof, the defendant shall be committed, not exceeding two days for each dollar of the whole amount thereof. It shall be the duty of the District Attorney to take measures for the enforcement of the judgment of the Court of Sessions or of the Supreme Court. Cases of appeal or review under this section shall take precedence of all other cases, except where defendants or witnesses are actually confined in jail awaiting trial. If the defendant shall fail or neglect to appear before the Court of Sessions or the Supreme Court upon such appeal or review, the judgment appealed from shall be affirmed with costs.

§ 11. Whenever any person shall be convicted of any offense which shall constitute a breach of any undertaking which shall have been given by such person, such undertaking shall be deemed forfeited, and the court before which such conviction shall have taken place shall cause notice thereof to be given to the District Attorney of the County in which such undertaking is filed, and it shall be the duty of such District Attorney forthwith to prosecute such undertaking in the name of the People of this State, and to use all lawful means to collect the amount thereof; and in all judgments rendered upon such undertakings there shall be included double costs, which shall be received by the District Attorney to his own use.

§ 12. All intoxicating liquors which shall be manufactured or sold, or kept intended for sale, contrary to any provision of this act, shall be forfeited to the People of this State, and upon being adjudged forfeited, as hereinafter provided, shall be destroyed, together with the vessels in which the same is contained at the time of the seizure thereof.

§ 13. Whenever complaint on oath or affirmation shall be made before any magistrate authorised to hold a court as provided in the fifth section of this act, of the commission of any offence specified in the third section of this act, it shall be the duty of such magistrate forthwith to issue a warrant for the apprehension of the person or persons charged with such offence, and to cause him or them to be brought before him to be dealt with according to law. Such warrant shall also contain a command to the officer to whom the same is directed with proper assistance forthwith diligently to search the store, dwelling house and premises of the person or persons charged, and seize and safely keep all liquor found therein, with the vessels in which the same is contained. It shall be the duty of the officer to make such search and seizure notwithstanding he may not be able to find or arrest the person or persons charged. All liquor so seized, together with the vessels in which the same is found, shall be stored and kept in some safe and convenient place, to be disposed of as hereinafter provided.

§ 14. Whenever it shall appear upon the trial or after the conviction of any person charged with any such offence that the person so charged was the partner, clerk, servant or agent of any other person in respect to the act constituting the offence charged, it shall be the duty of the Court to issue a warrant for the arrest of such other person and the search of his premises; and the same proceedings shall be had thereupon as upon a warrant issued upon an original complaint.

§ 15. Whenever complaint on oath or affirmation shall be made to any such Magistrate by any three persons, residents of the town or city where the complaint is made, that they have reason to believe, and do believe, that intoxicating liquors are manufactured or are kept or deposited, intended for sale, by any person not authorized to manufacture or sell the same, as provided in the first section of this act, in any place whatsoever within said city or town, or upon any water adjacent thereto, or within five hundred yards of the boundary thereof, it shall be the duty of such Magistrate forthwith to issue a warrant commanding the officer to whom the same shall be directed, with proper assistance, forthwith diligently to search such place in the day-time, and to seize all liquors found therein, together with the vessels within which the same are contained, and to store the same in some safe and convenient place, to be disposed of as hereinafter provided. But no such warrant shall be issued to search any dwelling-house, unless one of said complainants shall testify to some fact or facts and circumstances which, in the opinion of such Magistrate, is or are sufficient reasonably to induce belief that intoxicating liquor has been sold therein by the occupant thereof, or with his consent, within one month before the time of making such complaint and are then kept therein intended for sale. Whenever any such complaint shall be made to any such Magistrate, it shall be his duty to examine such complaints; and if, in his opinion, there is good cause to suspect that such liquor is kept or deposited, intended for sale, contrary to the provisions of this act, by any person or persons who shall be named or described to him, the warrant of search shall also command the officer to whom the same shall be directed to apprehend such person and bring him before such Magistrate, to be dealt with according to law.

§ 16. It shall be the duty of every Sheriff, Under Sheriff, Deputy Sheriff, Constable, Marshal or Policeman to arrest, and any citizen may arrest, any person whom he shall see actually engaged in the commission of any such offense, and to seize all liquor exposed for sale at the time and place of the commission of such offense, and forthwith to convey such person before any such Magistrate of the same city or town, and to store the liquor so seized in some safe and convenient place, to be disposed of as hereinafter provided.

§ 17. Whenever any liquor shall be seized under any provision of this act, it shall be the duty of the officer or person by whom such seizure is made forthwith to give written notice to the owner thereof of the seizure of such liquors, which shall be described in such notice as near as may be, and of the name of the Magistrate by whom the warrant was issued, or in case of seizure under the last section, before whom the person arrested was carried, and the name and residence of such officer or person making such seizure, and the time of such seizure. Such notice shall be served by delivering the same to the owner personally, or by leaving the same at his last or usual place of residence, with a person of mature age residing on the premises. If the owner be not known or cannot be found, and his place of residence be not known to the officer, such notice shall be served by delivering the same to any person of mature age residing or being employed in the place in which such liquor was contained, or if none such be found, by posting the same in a conspicuous place upon the outside of such place, and copies of such notices, containing also a description of the place in which such liquor was found, shall in all cases forthwith be conspicuously posted in at least two public places within said city or town.

§ 18. All liquors seized under any provision of this act, shall be kept stored for two weeks after service and posting of notices as required by the last section, after which time, upon due proof of such service and posting by the return of the officer endorsed upon the warrant of search or by other evidence to that effect, such liquors shall be adjudged forfeited by the Magistrate named in such notice, to whom such proof shall be made, unless they shall have been claimed as hereinafter provided.

§ 19. Any person may, at any time before forfeiture, present to the Magistrate named in such notice, an affidavit or affirmation in writing, stating that such liquor at the time of such seizure was actually owned by him, or by some other person named by him for whom he is agent, that he or such person had not become possessed thereof for the purpose of preventing its forfeiture, and that the same had not been manufactured or kept intended for sale contrary to the provisions of this act to the best of his knowledge and belief, and also specifying the purpose for which the same is kept, and thereupon it shall be the duty of such Magistrate forthwith to appoint a time and place for the purpose of trying such claim, and to cause notice thereof to be given to the person or persons upon whose complaint the warrant of search was issued or by whom such seizure was made. At the time and place appointed, such Magistrate shall hold a Court for the trial of such claim, and shall hear the proofs and allegations offered in support of and against the same, and unless it shall appear to the satisfaction of the Court or Jury that such liquor had been lawfully manufactured, and came lawfully into the possession of the person claiming the same, and was kept by him for lawful purposes, the same shall be adjudged forfeited, and judgment shall be rendered against the claimant for the costs, and in default of payment thereof, execution shall be issued therefor against his property and person. Upon the trial of such claim, if the claimant shall allege that the liquors seized have been regularly imported under the laws of the United States and that they are contained in the original packages, the Custom House certificates of importation and proofs of marks on the casks or packages corresponding thereto, shall not be received as sufficient evidence that the liquors contained in said packages are those actually imported therein. The claimant may, at the time of making such claim, demand that the same be tried by a Jury, and thereupon the like proceedings shall be had in respect thereto as are provided by law in relation to trials by Jury before Courts of Special Sessions. The Court shall keep minutes of the proceedings, testimony and judgment upon such claim, which shall be subscribed by the Magistrate holding the Court.

§ 20. Whenever judgment shall be rendered upon any such claim adversely to the claimant, he may, within four days thereafter, give written notice to the Magistrate by whom such judgment was rendered, that he intends to appeal therefrom to the County Judge of the County within which such claim was tried, but such notice shall be of no effect unless such appellant shall at the same time deliver to such Magistrate an undertaking with one or more sureties to be approved by such Magistrate, that if judgment be rendered against him upon such appeal, and execution thereupon be returned unsatisfied in whole or in part, they will pay the amount unsatisfied. Upon the giving of such notice and undertaking, all further proceedings upon such judgment shall be stayed until such appeal shall have been decided against the appellant, or dismissed for want of prosecution as hereinafter provided.

§ 21. Whenever notice of appeal and an undertaking shall be given to any Magistrate, as in the last section provided, it shall be the duty of such Magistrate to send by the officer who shall have seized such liquor, or some other officer, the minutes taken by him upon the trial of such claim together with the notice of appeal and undertaking to such County Judge, who shall thereupon by order appoint a place and time not less than ten nor more than twenty days thereafter for hearing such appeal, and shall deliver such order to such officer. The officer shall, within five days thereafter, serve a copy of such order upon the claimant and upon each one of the complainants, and make return thereof to such County Judge. He shall also make oath before such Magistrate of the delivery of such minutes, notice, and undertaking to the County Judge. If the claimant fails to appear at the time and place appointed for hearing such appeal, the same shall be dismissed and the judgment appealed from shall be affirmed. If he appear, the appeal shall be heard upon the minutes delivered to the County Judge, and shall be decided within twenty days thereafter. The County Judge shall cause his decision, together with the minutes, notice and undertaking, to be forthwith filed in the office of the County Clerk, and judgment shall be entered thereupon by such Clerk. The complainant or complainants may appear with or without counsel on behalf of the people of this State upon the trial of such claim, or the hearing of such appeal, but no proceedings shall be dismissed or judgment reversed because of his or their failure to appear. If the judgment appealed from be affirmed, the complainants, if they have appeared, shall recover costs to be taxed by the County Clerk. Upon the demand of any person having an interest in such judgment, the County Clerk shall issue execution thereupon in the same manner as upon judgments in civil actions. If such execution be returned unsatisfied in whole or in part, any such person may maintain an action upon the undertaking given upon such appeal, and recover therein the amount of his interest in such judgment with costs. The decision of the County Judge shall be final.

§ 22. Whenever any liquor shall have been adjudged forfeited, as provided in the eighteenth section of this act, or whenever any claim shall have been decided adversely to the claimant, and the time for serving notice of appeal shall have elapsed, and no such notice shall have been served, or whenever such notice shall have been served and the judgment appealed from shall have been affirmed and notice thereof given to the Magistrate before whom such claim was tried, or forty-five days shall have elapsed since the delivery of such minutes, notice and undertaking to the County Judge, and proof thereof shall have been made and no notice of the reversal of the judgment appealed from shall have been served upon such Magistrate, it shall be the duty of such Magistrate forthwith to issue a warrant, commanding that the liquor so seized and forfeited be destroyed, and the officer to whom the same shall be delivered, shall forthwith proceed, in the presence of one of the complainants, or of some other person designated in such warrant, and to be summoned by him to execute the same, and such person shall join with the officer in making return, by affidavit, of the time, place, and manner of the execution of such warrant.

§ 23. No proceedings or judgment had or rendered under any provision of this act shall be set aside or be void by reason of any technical errors, or defects not affecting the merits, but the same may be amended without notice before or after judgment, or upon appeal, or review, or after judgment rendered upon appeal or review, when by such amendment substantial justice will be promoted.

§ 24. Whenever upon the trial of any claim it shall appear by oath to the Magistrate before whom the same is tried, that the liquor so claimed was kept intended for sale contrary to the provisions of this act by the claimant or by any other person who shall not have been arrested, or for whose arrest a warrant shall not have been issued, such Magistrate shall forthwith issue a warrant for the arrest of such person and cause him to be brought before such Magistrate to be dealt with according to law.

§ 25. Whenever complaint on oath or affirmation shall be made before any Magistrate by any person that he has just cause to suspect and does suspect and believe that any offense specified in the third section of this act has been committed, and that some other person or persons named by him has or have knowledge of the commission of such offense, such Magistrate shall forthwith issue a summons to the person or persons so named, commanding them or him to appear before him at a place and time not more than two days thereafter, to be designated in such summons, to testify in relation to such complaint. Such summons shall be served by any officer to whom the same shall be delivered, or may be served by any other person by stating the contents or delivering a copy thereof to the person or persons named therein, and at the same time showing him or them the original. If the person or persons so summoned shall fail to appear, the Magistrate upon proof of the service of such summons by the return of an officer or the oath of any other person, shall issue an attachment to compel the attendance of such person or persons for the purpose of giving such testimony. The person so attached may (unless some reasonable cause or excuse be shown by his own oath or the oath of some other person) be punished by fine not exceeding ten dollars, and in default of payment he may be committed.

§ 26. It shall be the duty of every Constable, Marshal, or Policeman, whenever he shall see any person grossly intoxicated in any public street or place in violation of public decency, to apprehend such person and keep him in some safe and convenient place until he shall become sober, and thereupon forthwith to take him before some Magistrate authorized to issue a warrant of arrest or search as hereinbefore provided.

§ 27. Whenever any person shall appear or be brought before any Magistrate as provided in the two last sections, it shall be the duty of such Magistrate to administer to such person an oath or affirmation, and to examine him for the purpose of ascertaining whether any offense has been committed against any provision of this act. If such person shall refuse to be sworn, or affirmed, or to answer any question pertinent to such examination, he shall be committed to the common jail, there to remain until he shall consent to be so sworn, or affirmed, or to answer. If upon such examination it shall appear that any such offense has been committed within the jurisdiction of such Magistrate, it shall be his duty to issue a warrant for the arrest of the offender and the search of his premises as hereinbefore provided. If it shall appear that any such offense has been committed at any place beyond the jurisdiction of such Magistrate, it shall be his duty to reduce such examination to writing and to certify and send the same by any officer to any Magistrate having jurisdiction of the offense charged, who shall thereupon proceed in relation to such complaint in the same manner as if the same had been made before him.

§ 28. Whenever any magistrate shall have reason to believe that any person who is a material witness in relation to any offense charged to have been committed against any provision of this act will neglect to attend upon the trial of the complaint for such offense, he may require of such person an undertaking with sureties or surety to be approved by such magistrate that such person will attend upon such trial until the same shall be concluded, or he shall be discharged by the Court, and in default of giving such undertaking, such person shall be committed until the same be given or he be otherwise discharged according to law. If the offense shall be charged to have been committed beyond the jurisdiction of such magistrate, it shall be his duty to send such undertaking, or, in default of the same being given, the person of whom the same is required to the magistrate to whom he shall send the complaint for such offense as provided in the last section.

§ 29. Whenever any defendant or witness shall fail to appear before any Court according to the condition of any recognizance or undertaking entered into under any provision of this act, such Court shall forthwith render judgment in favor of the People of this State for the amount of such recognizance or undertaking, against the persons bound thereby. If such judgment be rendered by any Court held under the fifth section of this act, the Magistrate holding such Court shall forthwith issue execution upon such judgment against the property and persons of the defendants therein. If such judgment be rendered by the Court of Sessions or the Supreme Court, the District Attorney of the County where the judgment appealed from was rendered shall cause such execution to be issued. If such failure to appear be satisfactorily excused to the Court by which any such judgment is rendered at the same or next term thereof, or in case of the failure of any defendant to appear before a Court held under the fifth section of this act, within ten days thereafter, such Court may, upon such terms as may appear reasonable, set aside such judgment and proceed with the trial of the complaint, or the hearing of the appeal or review as the case may be. The Court by which any such judgment shall be rendered upon the failure of any person to appear as a witness, or the County Judge of the County within which such Court is held, may, upon such failure being satisfactorily excused, and upon payment of costs which shall have accrued thereby, stay all proceedings upon such judgment.

§ 30. Whenever any fine imposed upon the conviction of any person of any offense specified in the third section of this act shall be collected, one-half thereof shall be paid to the person or persons upon whose voluntary complaint the warrant was issued or the first proceedings taken, but no person shall be convicted upon the testimony of any one complainant unsupported by other evidence, unless such complainant shall before trial waive his right to receive such part of the fine.

§ 31. Any Magistrate may issue subpœnas to compel the attendance of witnesses upon the trial of any complaint or claim under this act before the same or any other Magistrate. In case any person summoned to appear as a juror or witness upon any such trial shall fail to appear, he shall be liable to the like penalties, and may be proceeded against in like manner as provided by law in respect to jurors and witnesses in civil actions before Justices of the Peace.

§ 32. Whenever a Magistrate or Jury before whom any complaint for any offense or any claim shall be tried under any provision of this act shall be satisfied from the evidence and proceedings had before him or them that the complaint was made without probable cause and with malicious intent to injure or harrass, such Magistrate or Jury may render a verdict against the complainant for costs, and if such complainant shall not forthwith upon demand pay such costs, he shall be committed to the Common Jail of the County until the same be paid, not exceeding two days for each dollar of the amount thereof.

§ 33. No person who shall have been convicted of any offense against any provision of this act, or who shall be engaged in the manufacture or sale or keeping of intoxicating liquor, contrary to the provisions of this act, shall be competent to act as juror upon the trial of any offense, or claim, or action under any provision of this act, and when any person summoned as a juror upon any such trial shall be challenged for such cause, the Court shall examine such person under oath in relation to such challenge, and no answer which he shall make shall be used against him upon the trial of any offense or action arising under this act, except upon the trial of such person for perjury; but such person may decline to answer, in which case he shall be discharged from attendance as such juryman.

§ 34. It shall be the duty of any officer specified in the forty-seventh section of this act, if he shall suspect that any intoxicating liquors are kept intended for sale in any place of any kind for selling refreshments at or near the place of any exhibition, parade or public occasion of any kind, to search such suspected place, and if any intoxicating liquors are found therein to seize the same and to arrest the keeper or keepers of such place and all persons engaged therein, as clerks, servants or agents, and forthwith to store such liquors and take such person or persons before any Magistrate having jurisdiction of such offense to be dealt with according to law.

§ 35. No action shall be maintained to recover the value or possession of any intoxicating liquor sold, taken, detained or injured, unless the plaintiff shall prove that such liquor was sold according to the provisions of this act, or was kept and owned by him for lawful purposes.

§ 36. Any person may maintain an action to recover any money paid or the value of any services or labor rendered or done, or the value or possession of any property assigned and conveyed by the husband, wife, parent, child, ward, apprentice or servant, of the payment for liquor sold contrary to the provisions of this act, by plaintiff, and in every such action the person by whom such money was paid, services or labor rendered or done, or property assigned or conveyed, shall be a witness to any matter pertinent to such action, notwithstanding he or she may be the husband or wife of the plaintiff. Any married woman may commence and maintain any such action in her own name, with or without the consent of her husband.

§ 37. All securities and evidences of debt of whatsoever kind, given in whole or in part for or on account of liquor sold contrary to the provisions of this act, shall be utterly void as between all parties having notice thereof, either directly or indirectly, and upon the trial of any action instituted upon any such security or evidence of debt, the plaintiff may be called to prove such notice, and shall not be considered a witness in chief unless the party calling him shall make him such by examining him as to other matter.

§ 38. Every person who shall sell any liquor in violation of any provision of this act, shall be liable for all damages which may happen or result to any other person from any act, negligence, carelessness, inadvertence, default or inability to control himself or any other person while in a state of intoxication produced by the liquor so sold.

§ 39. Any person may maintain an action against any other person who shall sell any liquor contrary to any provision of this act to the husband, wife, parent, child, guardian, ward, apprentice or servant of the plaintiff, and it shall not be necessary in any such action to aver or prove any special damage resulting to the plaintiff from such sale, but the Court or Jury before which such action is tried, shall assess the damages of the plaintiff therein; but any special damage may be shown. Any married woman may maintain any such action in her own name with or without the consent of her husband. Upon the trial of any such action, the person to whom such liquor was sold may be a witness, notwithstanding he or she may be the husband or wife of the plaintiff.

§ 40. In all cases in which the right to commence any civil action is given by this act, the same may be commenced and maintained in any Court of a Justice of the Peace, or in any inferior Court or Court of Record having any original civil jurisdiction, or in any County Court, and shall be subject to the same rules of law and evidence as other civil actions, except as herein otherwise provided. In every such action commenced in any Court of Record, if the recovery of the plaintiff shall not exceed $50, he shall not recover more costs than damages. Execution may be issued against both person and property upon any judgment rendered in any such action.

§ 41. Whenever judgment shall be obtained in any such action against any person who shall have given the undertaking prescribed by the first section of this act, and execution upon such judgment shall be returned unsatisfied in whole or in part, the party in whose favor such judgment was rendered may maintain an action against the persons bound by such undertaking, and may recover judgment therein for the amount so remaining unsatisfied with costs.

§ 42. Upon the trial of any complaint or civil action commenced under any provision of this act, proof of the manufacture, sale or keeping of liquor shall be sufficient to sustain an allegation that the same was unlawful. The certificate or orders required by the second section of this act, to be produced to or to be in the possession of the person selling such liquor, shall be the only evidence received to prove such sale to have been lawful, unless it shall appear to the satisfaction of the Court that such certificate or order has been by accident and without fault lost or destroyed.

§ 43. No person or corporation shall knowingly carry or transport any liquor from place to place within this State, or from any place without this State to any place within this State, and no person shall knowingly deliver any liquor to any other person or to any corporation for the purpose of being so carried or transported unless the name and place of business or residence of the person to whom the same is to be conveyed, together with the words "intoxicating liquor" are distinctly marked on the outside package in which the same is contained, nor unless he or they shall have in his or their possession and accompanying such liquor, a certificate under seal from the County Clerk of the County to which such liquor is to be conveyed that the person to whom the same is to be conveyed has filed the undertaking prescribed by the first section of this act, or the affidavit or affirmation prescribed by the second sub-division of the second section of this act. But this section shall not apply to the carriage of liquor to any place within the County in which the same was sold. Any person or corporation offending against any provision of this section shall be liable to a penalty of $50, to be sued for and recovered by and in the name of any person who shall first commence an action therefor.

§ 44. Any Magistrate authorised to hold a Court as provided by the fifth section of this act, may at the request of any other Magistrate in the same City or County before whom any complaint or claim is pending under any provision of this act at any time before the trial thereof, take the place of the Magistrate making such request in respect thereto, and shall have the like jurisdiction to proceed thereupon as such other Magistrate had at the time of making such request.

§ 45. Every Magistrate before whom any such complaint or claim is pending or by whom any judgment upon any such complaint or claim shall have been rendered but not enforced at the time of the expiration of his term of office, may proceed thereupon in the same manner as though his term of office had not expired, and whenever the office of any Magistrate before whom any such complaint or claim is pending, or by whom any such judgment has been rendered but not enforced, shall become vacant by death or otherwise, such proceedings or judgment shall not be thereby discontinued or voided; but any other Magistrate of the same city or town, upon receiving notice thereof, shall have the same jurisdiction in respect thereto, and shall proceed thereupon in the same manner as upon proceedings or judgment commenced before or rendered by him. Every person except the County Judge or County Clerk who shall have the custody or control of any minutes or other papers relating to any such proceedings or judgment shall deliver up the same upon the written order of any Magistrate so authorised, to continue such proceedings or enforce such judgment, and obedience to such order may be compelled by attachment and imprisonment as for a contempt.

§ 46. In any County in which there now is, or hereafter may be, a Penitentiary, the Court before which any conviction is had for any offense specified in any section of this act, may in its discretion sentence and commit the person convicted to such Penitentiary at hard labor, instead of the Common Jail of such County.

§ 47. All process issued under any provision of this act shall be executed by any Sheriff, Deputy-Sheriff, Constable, Marshal or Policeman, to whom the same shall be delivered, and every such officer shall make return upon such process to the Court or Magistrate by whom the same was issued, of the manner in which he executed the same, and every such officer when required shall perform all such services, and make such proof as are prescribed by any section of this act.

§ 48. Every public officer who shall neglect or refuse to perform any duty required of him by any section of this act, shall, upon conviction thereof, be adjudged guilty of a misdemeanor, and shall be punished by fine not exceeding $500, or by imprisonment not exceeding one year, or by both such fine and imprisonment. Such conviction shall work a forfeiture of office in all cases except those of judicial officers, and the person convicted shall forever be disqualified from holding any office under the Constitution and Laws of this State.

§ 49. Every person who shall give any certificate or order of any kind authorized by any provision of this act, which shall be false in any respect, or who shall forge, counterfeit, or falsely alter any such certificate or order, or who shall utter as true and genuine, any such forged, counterfeit, or altered certificate or order, with intent either himself to obtain or transport any intoxicating liquor, and every person who shall give or lend to or receive from any other person any such genuine certificate or order with intent to enable the person to whom the same is given or lent to obtain or transport or cause to be transported any intoxicating liquors for himself or for any other person other than the person for whose benefit such certificate or order was made or given, shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be punished by fine not exceeding $250, or imprisonment not exceeding one year, or by both such fine and imprisonment.

§ 50. Every person who shall willfully and corruptly swear or affirm falsely to any material matter upon any oath or affirmation taken or administered under any provision of this act, shall, upon conviction thereof, be adjudged guilty of perjury, and shall not thereafter be received as a witness to be sworn in any matter or cause whatever, until the judgment against him be reversed, and shall be punished by imprisonment in a State Prison for a term not exceeding ten years.

§ 51. The following *fees* shall be allowed for services rendered under the provisions of this act, and whenever judgment shall be rendered for costs there shall be included therein fees for such prospective services as shall be necessary to enforce such judgments.

To any Magistrate performing the following services:

For administering every oath, 6 cents.

For every warrant of any kind, commitment, attachment or venire, 25 cents.

For every subpena or summons, for each witness named therein, 6 cents.

For taking security by recognizance or undertaking in any case, 25 cents.

For the trial of any complaint or claim, $1.

For a certificate of conviction, 25 cents.

For taking and certifying complaint to another Magistrate, 50 cents.

To any Sheriff or other officer performing the following services:

For executing any warrant of arrest or attachment, or making an arrest without process, 75 cents for each person arrested.

For serving a subpena or summons, or order of County Judge, for each person served, 25 cents.

For summoning a Jury and attending same, $1.

For conveying any person to jail or to a penitentiary, or from jail before a magistrate upon an order, 25 cents.

For executing any warrant of search, or making any search without process, $1.

For conveying liquor seized, to place of storage, 50 cents, besides expense of labor, cartage and storage.

For executing warrant for destruction of forfeited liquor besides actual expense, $1.

For conveying certified complaint to any Magistrate, or notice of appeal, undertaking and minutes to County Judge, 50 cents.

For every mile more than one, actually and necessarily traveled in performing any of the foregoing services, except summoning a jury, 6 cents.

To the complainant or other person summoned to witness the destruction of forfeited liquor, for witnessing such destruction, and joining with the officer in making proof thereof, $1.

Upon judgment of affirmance, upon any appeal by any claimant of liquors seized under this act, the costs of the complainants shall be the same as upon appeals from judgments in civil actions rendered by Justices of the Peace.

No fee shall be demanded or received by any County Clerk for filing any undertaking executed and acknowledged as provided by the first section of this act, or any affidavit or affirmation made as provided by the second sub-division of the second section of this act, or for giving any certificate of the filing of such undertaking, affidavit or affirmation, and of the contents thereof, and every such undertaking, affidavit or affirmation shall be filed and certificate given by the County Clerk, to whom the same is presented, or from whom the same is required.

§ 52. The term "intoxicating liquor" and "liquor" when used in this act shall be construed to extend to and include all alcoholic, vinous, malt and fermented liquors, and all mixed liquors, part of which is alcoholic, vinous, malt or fermented.

§ 53. All acts and parts of acts inconsistent with this act are hereby repealed.

§ 54. This act shall take effect on the first day of July next.

The McDonogh Case.

This important case was decided yesterday by the Supreme Court against the States of Maryland and Louisiana, and in favor of the cities of New-Orleans and Baltimore.

Chief Justice Eustis delivered an elaborate and learned opinion. He looked upon the legacies in favor of the cities in the nature of pious bequests. Such bequests were regarded with favor by the law. Corporations were peculiarly the objects of such dispositions, inasmuch as they were the most efficient agents of extensive charities. Bequests like those under consideration were frequently made to corporations. In such cases it would generally be found that the corporations were merely selected as the instruments of the benevolence of the testator. A simple legacy to a city or corporation would not be reasonable or natural. Such legacies were always connected with charitable uses, and, in furtherance of philanthropic intentions, the cities had, under article 1,536 of the Civil Code, full capacity to accept legacies of this character.

If, as contended, the dispositions in favor of the cities were charged with illegal and impossible conditions, these conditions were to be regarded, according to article 1,506 of the Civil Code, as not written, consequently they did not prevent the legacies from taking effect. If the conditions were legal, and could be carried into effect, the cities were bound thereby. If, on the contrary, these conditions were of a character reprobated by law, then the observance of them was dispensed with by article 1,504 of the Civil Code, and the cities would take the property and disregard them. Under this view, he considered the legacies to the cities as legal and valid in all respects.

Justice Rost also gave an able and lengthy opinion, in which he concurred in the conclusion of the Chief Justice, for reasons substantially the same.

Justice Dunbar concurred fully in the opinion of the Chief Justice.

Justice Slidell dissented from the majority of the Court, in an opinion marked with great erudition and vigor of expression. John McDonogh bequeathed his property to the Cities of New-Orleans and Baltimore, for certain intents and purposes which the testator had described with minute particularity, and for the execution of which he had contrived a complicated machinery. He regarded the dispositions as containing conditions of an illegal character, and contrary to public policy. The title created by those dispositions was unknown to our law, under which the titles to property are few and simple. The cities could not accept these legacies in the mode prescribed by the testator, nor could they fulfil the conditions which the testator had imposed on them. The intention of the testator was to give the property to the cities, if they could strictly carry out those conditions; if not, the testator clearly intended that his property should go to the States. If the cities were allowed to accept these bequests, and disregard the conditions imposed on them, it would be violative of the intention of the testator. Such a construction would give the property to the cities absolutely, although the testator had declared that he never intended a dollar to benefit the coffers of the cities. According to article 1,705 of the Civil Code, the intention of the testator must be adhered to, and that could only be done in this case by giving the property to the States of Louisiana and Maryland. The heirs, although not parties to this controversy, were claiming the property in a different tribunal, but, in the opinion of Justice Slidell, they could not assert a title superior to that of the States. He therefore thought the States were entitled to the property in controversy.

In the opinion of all the Judges, the City of Baltimore was not legally represented before the Court. [N. O. Delta, 18th.

HIGH PRICE OF NEGROES.—At public auction on Thursday, Thomas Ryan & Son sold fifteen likely negroes for $10,365, or an average of $691. Three boys, aged about 17, brought the following sums, viz: $1,065, $1,065, $1,000, and two $1,100; making an average of $1,022. Capers & Heyward sold a gang of 109 negroes in families. Two or three families averaged from $1,000 to $1,100 for each individual; and the entire sale averaged $650. C. G. Whitney sold two likely female house servants, one at $1,000, the other at $1,190. [Charleston Courier, Jan. 22.

☞ *The Southern Literary Gazette* has now been incorporated with *The Charleston (S.C.) Weekly News*, under the Editorial supervision of P. H. Haine, Esq., for some time Editor of the former journal.

☞ At the late election for town officers in Aberdeen, Miss., on the 3d inst., the anti-liquor license ticket prevailed by a considerable majority; the entire Board of Aldermen is opposed to granting licenses.

☞ William A. Roberts, a Democratic member of the Rhode Island House of Representatives, died on the 2d inst. at Providence, leaving a wife and three children.

MEXICO.

Pronunciamiento in Vera Cruz.

From The New-Orleans Picayune, 19th.

By the arrival of the brig American, Captain Mahoney, from Vera Cruz, we have received dates from the City of Mexico to the 28th ult., and Vera Cruz to the 2d inst.

We copy the following from *La Union*, of Vera Cruz, of the 29th ult.:

The City of Vera Cruz has seconded the plan of Guadalajara. The movement began night before last, in the Castle of San Juan de Ulua, among the troops which were to embark for Tampico. It seems that parties in the city had an understanding with others in the Castle, and the signal arranged was the extinguishment of the light in the light-house. Accordingly, no sooner was the light put out than people began to move through the city, giving the signals usual on such occasions. It would take up too much time and space to give an account of what passed during the night, and to detail the events which have resulted in a rejection of the authority of the Supreme Government of the nation; and we fear to extend our remarks, as our information may not be exactly correct. We will only say that the ayuntamiento passed the decree which we publish below. Gen. Marin and Cols. Robles and Urriza have not joined the pronunciados. The military command of the city is exercised by Señor Gamboa, and the Castle is commanded by Señor Tamariz.

The *Eco del Comercio* published an extra on the 28th, in which it says:

"Last night took place one of those great events in the history of nations, which are so honorable to those which, like Vera Cruz, have always marched in the path of liberal progress. The people in mass have petitioned the patriotic ayuntamiento for a reform of the tariff, equalizing it with that now in force in the port of Tampico, and an adherence to the plan of Guadalajara, in order that the Government may be administered with regularity and concert."

The ayuntamiento having met, the Chief of the Department addressed the people, who were assembled on the Plaza, from the balcony of the Palace, stating that the ayuntamiento had met in order to receive the request of the majority of the people of Vera Cruz.

A Committee of the people accordingly presented itself to the ayuntamiento, stating that the people were discontented with the present critical situation of the affairs of the country, which was felt more heavily in Vera Cruz than in any other part of the Republic, and demanded immediate relief. The particular measures we have already stated. The ayuntamiento took these demands into consideration, and passed an act declaring that they acceded to the request of the people in every respect. Proclamations were issued the next morning, by Don Manuel Gamboa, as Military Commandante of the city, addressed to the people and to the troops. The Custom-House was reopened on the 29th, the Deputy Collector officiating, as the Collector had not joined the movement, and the Reformed Tariff was proclaimed, which is exactly the same as that adopted at Tampico, and published in *The Picayune* of the 9th inst.

The officers and troops of the regular army in the castle had published their adherence to the pronunciamento.

The *Zempoalteca*, of Jalapa, of the 31st ult., does not appear to favor the pronunciamento, which was adopted by the National Guard and the ayuntamiento of that town. In its edition of the 31st ult., it contains three columns in blank, and the editor explains it by saying that he had prepared an article on the pronunciamento in Vera Cruz, but in the existing state of affairs he thought it prudent to suppress it. By a notice in the *Eco del Comercio* we see that the editors of the *Zempoalteca* have retired from the paper.

The *Eco del Comercio*, of the 2d, states that Don Francisco Tamariz had gone to Jalapa, to take command of the National Guard there, which had joined the movement.

Don José de Arrillago had been named and sworn in Governor *pro tem.* of the State. Don Miguel Palacio, the former Governor, having refused to join the movement, the seat of Government was removed to the City of Vera Cruz.

Cordova had joined the Vera Cruz movement, and advices to the same effect were momentarily expected from Orizaba.

The garrison had been increased by recruits to nearly 1,600 men, and the *Eco* states that the most energetic measures were being taken by the new authorities to place the fortifications of the city in a state of complete repair.

The news from the City of Mexico is exceedingly meagre. The portfolio of Foreign Affairs continued in the hands of the chief clerk, Don Miguel Arroyo, no one having been found to accept it. It is said that a new minister would be *pushed in* by certain parties, who style themselves "pure federalists."

Señor Iturbe had loaned to the Government the sum of $17,000, upon the personal guarantee of two gentlemen, whose names are not given.

The Senate as yet has taken no action upon the Tehuantepec question. We translate the following from the *Siglo* of the 26th ult.:

"This morning Señores Olarte, Payno and Pesado, (former agents of Mr. Sloo,) published in pamphlet form a representation which they have made to the Supreme Government on their propositions relative to the Tehuantepec route. In the introduction they refer to the political influence which the mixed company they represent would wield, and to the pamphlet which they published on the 8th December. They then refer to the right which they have legally acquired, as bidders under the call made by the Government, proving that none of the other companies have made propositions for navigating the river. They then restate the propositions as before published and enlarge upon the advantages which would accrue to the nation from the acceptance of their propositions, meeting as they do, all present and future difficulties, risks and contingencies of this important affair." * * * * *

"They conclude by showing the necessity of obliging the Company of Guanajuato to become a mixed Company, thus obtaining the aid of foreign capital to the construction of the Road, and to many other enterprises which will no doubt be undertaken when the opening of the Isthmus shall give an impulse to the spirit of speculation."

The *Siglo*, in its leading articles, argues that the Company of Guanajuato alone, without aid from North American "elements," will be able to meet the exigencies of the case, and adds that it is indispensably necessary that the United States shall recognize the neutrality of Tehuantepec.

The advices from the theater of military operations are of little interest. No active movements has taken place on either side, and the papers of the City of Mexico speak in terms of severe satire of the Government troops.

Gen. Uraga had received a thousand muskets and seven pieces of artillery from Mazatlan.

Gen. Bahamonde was at Zamora with about a thousand men. Ocampo and Perez Palacio, his antagonists, were entirely without resources and were endeavoring to make a forced loan.

In Durango, Gen. Morett has been proclaimed Governor of the State by the revolutionists, and the tribunals and the ecclesiastical Cabildo have recognized the new state of things.

In a discussion in the Chamber of Deputies, a Representative stated that he firmly believed the Government to be capable of selling the whole country for $500,000.

Many of the soldiers of the National Guard of the City of Mexico complain of having been pressed into the service. The *Orden* says, "It is unfortunate that Louis Napoleon has not sent us Abd-el-Kader."

Señor Muñoz Ledo has again offered his resignation as Governor of the State of Guanajuato.

Advices from Tehuantepec state that that Department had pronounced in favor of the plan of Guadalajara, and desired its separation from the State of Oajaca. A Vera Cruz paper says that on the 10th ult some insurgents attacked the barracks of Tehuantepec, but were repulsed.

Letters from respectable persons in Chihuahua give a terrible picture of the state of misery and destitution in which the troops in that State are at present. They add that neither discipline, order, nor social law can be maintained.

The Opera Company continue their performances in the City of Mexico with great success. The *Orden* having announced, in one of its critiques on "I Puritani," that the trumpet in the orchestra had lost the note *la* sharp, in the celebrated duo between the bassos, the artist waited upon the editors of the paper with his instrument, and desired to be heard by intelligent judges. He played *la* sharp until the editors compromised the matter by offering to give the name of the author of the critic.

The *Trait d'Union* says the port of Acapulco has been selected by a large whaling company formed at San Francisco as the dépôt for their operations. The first whaling ship arrived at Acapulco on the 12th of December.

The brig Ada, for this port, was to leave Vera Cruz about the 6th inst. The bark Flash, for New-York, was to sail in eight or ten days. These were the only vessels in port when the America left.

TEXAS.

Arrival of the Steamship Mexico.

From The N. O. Picayune, 19th.

By the arrival of the steamship Mexico, Capt. Place, we have received dates from Galveston to the 14th inst.

The News says that a letter has been received in Galveston, giving information that there was a rise in the Trinity at Pine Bluff, on the 3d inst., of three feet.

The light-house on Point Bolivar was lighted up week before last, and will continue to be lit up every night hereafter.

The News advocates the culture of rice in Texas.

The Journal says that Maj. John A. Williams, Chief Engineer of the Harrisburg Railroad, is now on an exploration of the Brazos bottom for a point of location for crossing the river. He is accompanied by Mr. David Loring, contractor, and they will reconnoiter the Colorado valley as high up as Austin, preparatory to the Company pushing forward this enterprise to the latter place.

The News says that a gentleman very well known to the citizens of Galveston as a man of high respectability and ample means, has gone on to attend the present Legislature at Austin, for the purpose of procuring a charter for a railroad from Galveston to Houston. He informed the editor of *The News*, that he wanted no bonus in lands, nor loan of money, nor any aid whatsoever from the State; nor did he want any monopoly or exclusive privileges. All he would ask is the privilege of constructing a double track railroad from here to Houston, which he would give full and satisfactory security should be completed within four years, or he would forfeit to the State the sum of $50,000 in case of failure.

The La Grange Monument states that a few days since Mr. Robert Ligon, of Fayette County, was found lying in one corner of his fence with all the back and upper part of his head shot off, his brains having been entirely blown out of his skull by the effects of the discharge of his gun. When discovered, he was stretched out on the ground, with his feet toward the fence, his gun lying near, or under him, and a quantity of blood on the upper rails of the panel nearest him, indicated that he was sitting on the fence when the gun was fired. Circumstances connected with the affair render it uncertain whether Mr. Ligon came to this sudden and shocking end by accident, or by his own voluntary act.

In answer to our inquiry made some time ago as to what has become of the fifty leagues of land donated by the State of Texas for the endowment of two colleges *The Clarksville Standard* says twenty-eight of those leagues have been well located in Cook and Grayson Counties, which will some day be "immensely valuable."

Robinson, of *The Huntsville Item*, says he was in possession of one hundred and ten dollars at the end of the dead year, all in good notes of the Commercial and Agricultural Bank of Galveston and admonishes those having claims against the Item office to send them in without delay, or he will be investing in negroes, horses, mules, &c., until there will be none left.

The steamship Yacht, in charge of a pilot, struck on the boiler of the steamship Globe, on Brazos bar, which caused her to leak, and obliged her to go into dock for repairs.

A case of small pox appeared at Austin, a few days since, but was promptly removed from town. Three cases are reported to have occurred at Bastrop.

The Journal gives the following items of news from the San Antonio papers:

Between San Antonio and the Salado a man's head was found on the road, about three miles from town. We have been unable to find that he has been identified.

There have been about fifteen horses stolen, within some 10 or 15 miles of San Antonio within the past few weeks. The depredators have not yet been detected.

Yesterday, a man, name unknown, jumped from the San Antonio bridge. He was drowned. We learn that he had been an employé of Mr. Sappington.

On the 24th ult., at Eagle Pass, a man by the name of Clark, belonging to the Boundary Commission, shot Thos. Riley, belonging to Company F., 1st Infantry. Clark then crossed into Mexico and shot another man by the name of James Sullivan. He was arrested, on the Mexican side, and is now under sentence of death by the Mexican authorities. Both Riley and Sullivan are reported dead.

During the last week or two, says *The Ledger*, we have heard of a number of Indian depredations, which are believed to be the work of the Lipans. We understand that a scouting party has been, or is about to be, sent in pursuit of these marauding parties. We hope these depredations will arouse the War Department to the necessity of a change of policy toward the Indians in Texas. The present policy has been tried sufficiently long enough to satisfy all that it will not give peace to our frontier.

If the General Government is really desirous of colonizing the Indians, so that they can be restrained and provided for, why is a proposition not made to Texas for a sufficient amount of territory for that purpose, before it is all located? The Government agreed to protect our frontier. If this cannot be done without giving them a separate territory, where they can be guarded and provided for, why has Texas not been asked to grant, bargain, sell or lease a portion of her territory for that purpose?

Spiritualism vs. Magnetism.

To the Editor of The N. Y. Tribune:

"Try the spirit," is both a scriptural and common sense maxim, and the only rule upon which those strange phenomena called Spiritual Manifestations should be examined; nor should any one blink the questions and doubts they raise, by the cry of "humbug" or collusion. But I wish to speak of them in that point of view mainly to which so many ascribe their phenomena, viz: Will, power, electricity and magnetism, as I cannot trace them to either of these or any of the mental capacities and affections of our nature.

A parent who strongly wills his child to do a thing, is sensibly drawn to or repelled from that child, as he obeys or disobeys him, unless passion supervenes, when, overcoming the first impulse of the mind to be drawn kindly or sorrowingly repelled, he may rush upon and strike his offspring. These impulsions and repulsions are in either case moving powers, and are sensibly felt both by parent and child. So two friends, unexpectedly meeting, fly to each other and meet *half way*, where attachments are equal, unless restrained by diffidence or etiquette. Here again is a moving power, and objects are equally moved upon and even sensationally felt, and are calculable to and of mathematical solutions. So two parties equally hating each other, suddenly thrown in contact, are as much and as actively repelled as the two friends are drawn to each other, and by an equally sensible force, and equally calculable, and, all things being equal, such is the case with all the natural affections and passions of our nature, and such their power of moving our bodies through space, whether by impulse or the will, and their relation is ever in the same ratio of their intensity, as is also their potency. Then, again, two mineral bodies, electrically drawn to or repelled from each other, if of equal bulk and weight and free to move, will be equally drawn toward or equally thrown from each other—*meeting half way* in the first case, or in the second thrown equidistant from each other when started from a given center—and the same is true of magnetic bodies, each sensibly repelling or each attracting the other, as they are negative or positively, or *vice versa*, opposed; and the space they travel over, other things being equal, will be the same, whether drawn to or repelled from each other—i. e., they divide the difference between them.

Let us apply these rules, then, to the Spiritual phenomena so called, viz: Let A, a medium of these manifestations, sit upon a chair with rollers, with a table (B) in front, likewise upon rollers, and of equal weight with him or herself. The result will then be (if any one of the supposed scientific solutions attempted of this phenomena be true) that the medium A and the table B will be mutually and equally repelled from each other, nor can the medium A fail to feel the conscious impression of something pressing against him or her equal to the weight of the body moved, until the point of repulsion is gained, and the same sensation would be felt if the table were drawn to him or her. No instance of such impressions or sensations have come to my knowledge, and I am therefore predisposed to the Spiritual theory, or to the supposition that a *will*, above and independent of the medium, is the moving principle. WILLIAM I. YOUNG.

☞ A writer in *The Transcript* of last Wednesday comments with deserved severity upon the wanton and needless destruction of a fine row of elm trees in front of the former residence of General Lincoln, in Hingham. The trees were planted some 60 or 70 years since, by Gen. Lincoln himself, and were naturally held in great estimation by his grandchildren, who still occupy his homestead. Apart from these sacred associations with the memory of a true patriot and a good man, which alone ought to have made them cherished objects to all, they were a great ornament to the village. The pretence that their removal was needed for widening the road is an idle and frivolous one, as all that was required could have been gained without their destruction. Their removal is therefore an act of unrelieved and needless barbarism, more worthy of Goths and Vandals, than of citizens of a town with any well-founded claims to intelligence and cultivation.

A writer in *The Hingham Journal*, commenting on this act in connection with the fact, that nothing has ever been done by the people of Hingham in honor of Gen. Lincoln's memory, well says:

"It would seem that one who served his country so faithfully in the most trying period of her history, and who throughout the great struggle, and ever after, enjoyed the marked confidence and friendship of Washington, merited, for the credit of the citizens of his native town, and at their hands, some memorial of his virtues and his services."

The wanton destruction of these memorials, planted by his own hand, is the crowning act of neglect on the part of those who, above all, should venerate his memory, and at least spare the feelings of kindred and descendants. [Boston Atlas.

MAINE LAW.—We notice by the journals that the Legislature is daily being flooded with petitions asking the passage of a law prohibiting the manufacture and sale of alcholic liquors, similar to the "Maine Law." These petitions are signed by Boards of Supervisors, County Officers and Grand Juries, by thousands and tens of thousands of legal voters, and by unnumbered women and children, who demand protection for their fathers, sons and brothers, against the attacks of the "worm of the still." On the 13th, a single member presented the petition of 37,519 legal voters and other inhabitants, asking the law, and other members presented numerous petitions for the same object. We sincerely hope that these prayers will be heeded, and that a law will be passed which will put out the fires of every distillery, knock in the head of every brandy, gin and rum cask, and break every whisky jug in the State. [Coldwater (Mich.) Sentinel, Jan. 21.

☞ "Grace Greenwood," in one of her late letters to *The National Era*, speaking of St. Peter's at Rome, says: "The works of Bernini and his disciples, marked as they nearly all are by the wild extravagance and boisterous strength with which this master seemed to boil over—bushy-headed saints, who look as though they had just alighted from riding on a whirlwind and directing a storm—angels in such a state of disheveled discomposure, with their drapery in such a crazy flutter of breezy folds, and their very wing-feathers so on end, you could almost believe them just escaped from some celestial insane asylum—these are simply detestable.

There are here a few monumental works by Thorwaldsen and Canova, which go far to make you forget these sculptured abominations. Many figures, originally fine, are utterly spoiled by an atrocious addition of drapery, consisting of sheets of tin, painted in vile imitation of marble. The modesty of Holy Mother Church has evidently had an alarming outbreak of late years, in the direction of art. Scarce a gleam of a saintly leg or an angelic bosom is now permitted to shock the pure eyes of the devout; but figures poetic and allegorical—muses, seraphs, and the larger-sized cherubs, are henceforth to be muffled up and wound about in this ungraceful and uncomfortable manner. '*Honi soit qui mal y pense.*' Oh, saintly nuns and holy fathers!"

☞ There are in Cincinnati 175 persons and companies that pay an annual tax of between five and ten thousand dollars; 54 who pay between one and two thousand; 15 who pay between two and three thousand; [illegible] who pay between three and four thousand; 1 who pays between four and five thousand; and two who pay between five and six thousand. Nicholas Longworth pays a tax of [illegible].