of New-York and said Committee received but took no notice in any way of the papers presented by your Committee. This gross insult to the people of New-York, through their representatives, developed to your Committee the real designs of these men, and they, therefore, felt it due to themselves that they should hold no more official intercourse with said Committee. Nevertheless the Chairman of your Committee sought to obtain from a member of the Committee on Cities and Villages (Mr. Pomeroy) some information with regard to the source from whence was obtained the draft of an amended Charter which was in the hands of said Committee. In answer to a question to that effect said Pomeroy stated that the bill was handed to him in his seat and he declined to state the source from whence it came; yet this Committee did report a bill thus obtained to the Legislature and recommended that it become a law. If there can be found in the whole history of legislation a more reckless transaction, your Committee are at a loss where to look for it. In a subsequent conversation with the said member of the Committee (Pomeroy), and while remonstrating against such high-handed legislation, your Committee were informed by said Pomeroy that the matter had been decided upon in a Republican Caucus, and that the bill would positively become a law. Said Pomeroy stated at the same time that said Republican party was a new party; that it had no patronage in the General Government, and must make places for its friends"—thus acknowledging in the most unblushing manner the iniquitous designs of these conspirators against order and good government. This same Pomeroy had the baseness afterward to deny upon the floor of the House the words by which he had committed himself and his party. It is not the purpose of the Committee to enter at this time upon a discussion as to the legality of these measures which reckless partisans have attempted to foist upon the people of this city. Their sole design is to lay before this Board a report of their action under the instructions which they received. The proper steps have already been taken to test the constitutionality of these acts, and the Committee rely with confidence upon the result. They know that the people will reject with scorn and indignation this attempt upon their rights by the enactment of laws not asked for by them, but conceived and carried through the Legislature by a few designing men, among them some whose previous attempts at fraud upon the ballot-box had met with the infamy they deserved, and who had secured the cooperation of well-known political intriguers at Albany. The sole intent and purpose of those laws are to annul the will of the majority of the citizens of New-York. It remains for the Courts to determine whether they are or are not constitutional, and it remains for the people to determine whether they will or will not submit to them. It would appear strange that representations from one section of the State, owing their position to the simple will of the majority, should thus defy the expressed will of the majority of another section, were it not for the notorious character of the men by whom they are controlled. It is well known that there exists in this State an organization of men who, for a series of years, have been banded together by bonds of a common infamy for the purpose of obtaining place and power, assuming by turns various names, for the purpose of deceiving the people as to the real character of their organization. They have succeeded in a few instances in times of political excitement, and under false cries of reform, in obtaining power for brief periods, only to be hurled indignantly from their places by reaction of feeling, when their real motives were discovered. Having at length exhausted every other name which could deceive the people, and finding their party despised in every section of the country, they at length assumed the sacred name of Freedom, and under a mock sympathy for a race which they of all others despise as their inferiors, they basely announced themselves as the sole exponents of Liberty; and by the most unblushing falsehoods, the most incendiary appeals and a lavish expenditure of money, they boldly attempted, by cooperating with all the elements of disunion and disaffection which existed in various portions of the country, to obtain possession of the General Government, purchasing or stultifying the press of the rural districts, and abandoning the larger cities, where their falsehood and baseness would be exposed, they confined their incendiary harangues to the interior of the State, and not until after the result of the late election was made known was it conceived how adroitly they had laid their plans. The patriotism of the Union triumphed; they were defeated in their real designs, but they succeeded in returning to the Legislature, from the interior counties, the most shameless set of political hacks who have ever disgraced the numerous parties to which they had in turn belonged, but which, in turn, they had traitorously betrayed. A list of their names, with the various schemes of public plunder, with which they have at times been connected, would be a sufficient history of these men. Their familiarity with legislation had taught them the power of a majority and they sought an opportunity to exercise it. Having already exhausted the Treasury of the State and plunged it into an enormous and inextricable indebtedness, they turned their venal eyes toward this devoted city. Here was wealth in abundance from which to fill the pockets of these unscrupulous leaders. Here, too, was the citadel of a union-loving Democracy—here the tide of fanaticism and corruption had been stayed—here their base designs had been checked—here their vile falsehoods exposed—hence revenge and cupidity joined their foul hands and united in enacting these most infamous laws which we are now called upon to submit to. New offices of every description have been created with large extravagant salaries, and filled with shameless partisans intrusted with the disbursement of millions wrung from the tax payers of the City, and having power to create a mercenary force of Police by which they hope to over-ride and overawe the free expression of our will. No man can read these laws and mistake their purport. They might well have been written in blood! for they may not be executed without it; and we now call upon the people to prepare for the issue.

"We may suffer—but we shall not suffer long;
We may suffer—but we *will not suffer wrong*."

Communications from the Chamberlain.—A communication was received from Mr. Stout, the City Chamberlain, in answer to a resolution as to why further payment was for the present refused on city warrants. The Chamberlain says the city has overdrawn from the Bank the sum of $549,500, and further payments cannot be made until money is got in on the bonds recently issued by the city at 7 per cent in anticipation of the city revenue.

After discussion, the subject was referred to the Finance Committee, and the Board adjourned to Monday.

THE STATE OF THE CITY TREASURY.

CHAMBERLAIN'S OFFICE, SHOE AND LEATHER BANK, NEW-YORK, April 23, 1857.

Hon. Board of Aldermen of the City of New-York.

GENTS: In compliance with a resolution of your Board, passed 20th inst., "requiring the City Chamberlain to "report his reasons for refusing to pay the city warrants lately "drawn on him, with a general statement of the amount of "funds in his possession to the credit of the several city accounts, &c., I beg to report that the city funds are kept by the Chamberlain under two heads—one the City Treasury account, and the other the account with the Commissioners of the Sinking Fund.

On the 11th day day of March last the City Treasury had to its credit one million two hundred and ten thousand four hundred dollars. On the 12th of March, the next day, the account was overdrawn two hundred and thirty-six thousand eight hundred dollars. This overdraft continued to increase daily until the 17th of April, when the City Treasury was overdrawn one million one hundred and thirty-two thousand six hundred dollars.............................$1,132,600

In addition the Shoe and Leather Bank had taken from the Controller, on his own account, revenue bonds for three hundred thousand dollars.............. 300,000

Making a total overdraft of the City Treasury account, including bonds held by the bank of one million four hundred and thirty-two thousand six hundred dollars 1,432,600

On the 17th day of April the Commissioners of the Sinking Fund had to their credit eight hundred and eighty-three thousand one hundred dollars.............. 883,100

Leaving a net overdraft over and above all accounts, City Treasury and Sinking Fund, five hundred and forty-nine thousand five hundred dollars............ 549,500

I beg further to state that the total amount of checks that have been refused payment are about two hundred thousand dollars, which amount would have been paid by the Chamberlain, in addition to the overdrafts above mentioned, if he had been assured that that amount would have been the extent of the overdraft, or would have saved the city warrants going to protest.

I would also advise the Board that revenue bonds are now being issued, bearing an interest of seven ₩ cent, which, being a very desirable investment, will undoubtedly in a few days replenish the City Treasury, when all demands will be met.

A. V. STOUT, Chamberlain.

BOARD OF SUPERVISORS.

THURSDAY, April 23.—Supervisor CLANCY in the chair.

A communication was received from the Commissioner of Taxes and Assessments, asking for additional office-room, as under the new charter they will have a large addition of business. The petition was referred to the Committee on Assessments. After the reference of a few papers, the Board adjourned to Monday.

THE GREAT MARKET SPECULATION CHECKED.

Controller Flagg, to whose untiring watchfulness the city is indebted for security against a thousand robberies, has put his veto on the nice speculation of Robert W. Lowber, who thought he had sold to the city certain lots of mud and water near the Dry Dock for the handsome sum of $196,000. How Mr. Lowber will get over the conclusive authorities set forth in the following communication we cannot guess, though perhaps he will try an injunction:

FINANCE DEPARTMENT, April 23, 1857.

To the Common Council.

The Controller has been served with a resolution, of which the following is a copy:

Resolved, That the Controller be and he is hereby directed to purchase without delay for the use and purpose of a market, the property of Robert W. Lowber, comprising a block and part of block of ground lying and being in the Eighteenth Ward, and bounded by Sixteenth street and Seventeenth street, Avenue C and the East River, together with the bulkhead in front thereof, extending from the center line of Sixteenth street, to the center line of Seventeenth street, and the water front between the center lines of said streets as continued, for the sum of one hundred and ninety-six thousand dollars ($196,000), the Corporation assuming the taxes and assessments unpaid thereon, in accordance with the proposition submitted to the Controller by Robert W. Lowber, under date of November 6, 1856, the property to be conveyed by good and sufficient warranty deed, free and clear of all liens and incumbrances, except taxes and assessments, upon the title to the said premises being approved by the Counsel to the Corporation, and the sum of one hundred and ninety-six thousand dollars is hereby appropriated for the purpose aforesaid, and provided the said taxes and assessments to be assumed by the Corporation shall not exceed the sum of twenty-five hundred dollars.

Resolved, That the said premises, when purchased, shall be subject to the control and supervision of the Commissioners of the Sinking Fund.

Adopted by the Board of Councilmen, January 21, 1857. Adopted by the Board of Aldermen, February 18, 1857. Received March 2, 1857, from his Honor the Mayor without his approval or his objections thereto; therefore, under the provisions of the amended Charter the same became adopted.

D. T. VALENTINE, Clerk C. C.

Soon after the passage of this resolution, Mr. Lowber called on the Controller to make some arrangements respecting a mortgage on the premises which he proposed to convey to the city. The Controller informed him that he could make no arrangements in regard to the mortgage or the purchase of the property referred to in the resolution. Mr. Lowber was informed at the same time that the Charter of 1849 contained an express prohibition applicable to the head of each executive department against incurring any expense, "whether the object of expenditure shall have "been ordered by the Common Council or not, unless "an appropriation shall have been previously made "covering such expense," and that without an act of the Legislature, authorizing a loan to be made or a tax to be levied, the Controller could not give effect to the "appropriation" contained in the resolution, and that he had no legal authority to obtain the means to pay Mr. Lowber.

Mr. Lowber then applied to the Common Council, and a resolution was passed instructing the Counsel to the Corporation to apply to the Legislature for an act authorizing the Mayor, Aldermen and Commonalty to borrow the sum of $250,000 to pay for the land in question, and, as is supposed, to erect a market thereon. The Legislature adjourned without passing this act. Meantime, the counsel of Mr. Lowber presented to the Controller what he stated to be a deed of the land, approved by the Counsel of the Corporation, which the Controller declined to accept.

Within a few days Mr. Lowber has commenced legal proceedings, the object of which probably is to compel the Controller to receive the deed and pay for the land the sum of $196,000, subject to back taxes, assessments, &c.

In the preceding part of this communication, that portion of the charter alone is alluded to which limits the power of the Controller in regard to incurring debts against the Corporation, when no legal means are previously provided for discharging those liabilities. By referring to the 19th sec. of the Charter of 1830; it will be seen that the Common Council itself is prohibited from incurring liabilities, unless there exists, at the time, legal provisions for discharging those liabilities. That section declares as follows, viz:

"The Common Council shall not have authority to borrow any sums of money whatever on the credit of the Corporation, except in anticipation of the revenue of the year in which such loan shall be made, unless authorized by a special act of the Legislature."

Without a special act of the Legislature, authorizing a loan or a tax, the Common Council and the Finance Department do not possess the legal power of procuring a single dollar to meet the demands of Mr. Lowber. It has been suggested that, although the Common Council is prohibited from borrowing on the credit of the Corporation, unless authorized by a special act of the Legislature, yet that it may incur debts. If the clear and explicit language of the Charters of 1830 and 1849, before referred to, leaves any chance for doubt that the authors of these Charters intended to prevent the Common Council and the Finance Department from creating debts without having previous provision for their payment, these doubts must be removed by a reference to the history of those acts, and the evils which they were intended to remedy.

At the time of the adoption of the Charter of 1830, Stephen Allen was a representative of this city in the State Senate; in his report to that body he gave a summary of the new provisions of the Charter, and pointed out the evils which these provisions were intended to remedy. Appended to this communication is an extract from Mr. Allen's report, marked A, Legislative Doc. 322, of 1830, vol. 4.

In the extract referred to, after alluding to Section 19 as a new provision and one intended to prevent the lavish and unnecessary expenditure of the people's money, he says: "In 1825 the Corporation was indebted, for loans on their bonds, $112,000; while in "1828 they had increased this debt to $343,500; "making an increase of burden upon the city in three "years, by taxes and debt, of $381,500."

Again, Mr. Allen says, after declaring that no regular appropriation is ever made for any object of expenditure whatever, particularly for the large amounts disbursed in celebrations, parades and refreshments, or any inquiry entered into whether the funds are in existence, or in any way available; for if the money is wanted the bond of the corporation will always bring it, as the whole real estate of the city is bound for the payment of the debt. An elucidation of this fact has been given in the comparison made by the Committee of the debt by bond between 1825 and 1828. The Committee have reason to believe, however, if the bill under consideration should pass into a law, that *a check will be given to this crying evil* (so much and so justly complained of by the people of New-York), by the provision directing that appropriations shall be made for every object of expenditure, together with the prohibition in the 19th section, forbidding the borrowing of any money without the consent of the Legislature, except in anticipation of the regular revenue of the city.

A. C. FLAGG, Controller.

THE POLICE CONTEST.

ARGUMENT UPON THE INJUNCTION.

SUPREME COURT—SPECIAL TERM—APRIL 23.—Before Judge DAVIES.

Fernando Wood agt. James W. Nye, Simeon Draper, Jacob Cholwell, James Bowen, James S. T. Stranahan and Samuel S. Powell.

The hearing upon the order to show cause why the injunction upon the new Police Commission should not be continued, took place this afternoon at 4 o'clock, in the General Term room, which was well filled with members of the Bar and others. Several of the new Police Commissioners were present, and Mayor Wood occupied a conspicuous situation near his counsel. Corporation Counsel Busteed was also present, looking wisely after the interests of his metropolitan client. The plaintiff was represented by Judge Edmonds, Charles O'Conor and Theodore Sedgwick; the defendants by A. Oakey Hall, Wm. M. Evarts, D. D. Field and Wm. Curtis Noyes.

Judge Davies suggested that the hearing in the first instance be at the General Term, which would be in session very soon, and Judge Edmonds professed himself willing to wait; but Mr. Evarts said no, unless the preliminary injunction were first dissolved. The Commissioners, whom he represented, could not accede to an adjournment upon any other condition than that. After a good deal of informal discussion, Judge Davies concluded to hear the case for a few hours and then adjourn it over.

After Judge Edmonds had read the complaint, and Mr. Evarts the affidavit on which the injunction was granted (both of which were published in this morning's TRIBUNE), and another affidavit embodying the fact of the meeting of the new Board, and what was done there, the hearing fairly commenced.

ARGUMENT ON BEHALF OF THE MAYOR.

Judge Edmonds proceeded with the argument. Mayor Wood, according to his counsel's statement, took this action in order to protect the peace and good order of the community, and to avoid a collision between the new Board and the Common Council, to which the action of the latter was tending. Upon the papers the question was distinctly presented whether the Metropolitan Police act was in contravention of the law of the land. The delicate authority which one Judge, a single man, is asked to exercise—to interpose between the Legislature and the people, had been so often exercised by the Courts, that it had become familiar under the Constitutions both of the United States and the several States. In support of this position the following authorities are referred to: 1 Kent, 453; 4 Hill, 144; 3 Selden, 97 and 99, 109, 119; 1 Story, c. 4; 3 Kernan, 360; 3 Kernan, 386. These cases showed the length to which Courts felt constrained to go to restrain the unwarrantable usurpations of the Legislature.

Is this a case calling for the discharge of this duty? Does the statute in question violate the scope and general purport of the Constitution or conflict with any clause thereof? The second section of the tenth article of the Constitution is that upon which we rely. It is as follows:

"SECTION 2.—All county officers whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties, or appointed by the Boards of Supervisors or other county authorities, as the Legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the Legislature may designate for that purpose. All other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed as the Legislature may direct."

This shows the operation of a general principle which pervades the Constitution, and a particular application of that principle to county and town officers. That principle conforms to the general purpose and scope of the Constitution under which we live. Those who framed it aimed to decentralize the power of this State. It was their great object.

Before the Constitution of 1820, the power was greatly centralized. Not even a Coroner derived his power from any other than the central power—the Governor. In that Constitution the reform was begun. In 1846 the same idea governed the Convention, which took another great step in the same direction; the Senatorial and Assembly Districts were increased in number, legislative powers were withdrawn in a great measure from Albany and scattered among the people at large. Even the judiciary felt the influence of this decentralizing movement; instead of one central Supreme Court, we now have a number of provincial Courts, and even the Court of Appeals receives fresh blood from the provinces every year.

Is not this act of the Legislature an evasion or a violation of the decentralizing principle? Whence comes this law? Are the local authorities incompetent to perform these duties? Why this aggregation of the four Counties? Would it not be as easy for the Counties to act separately as together? What necessity to depart from the principle of the Constitution. Was it competent for the Legislature to pass such a law? What power has the Legislature to get round the plain provision of this Constitution, that counties shall elect county officers and towns town officers—obliterating the local divisions of the State? Judge Edmonds proceeded to comment on the latter part of the section as follows: In 1847, all matters connected with the police were local. The Constitution then bore upon them as such. Whether city or county officers, they were local and fell within the former part of the section. At that time the police establishment was in existence, and the Constitution acted upon that state of things.

Is it a new office? As such, does it fall within the latter clause of the section? These gentlemen are Commissioners of Police, with certain enumerated powers. There is no new function, no new name, throughout. The act of 1813 establishes the police power of this city; that of 1844 appoints a Chief of Police, provides for the appointment, removal and compensation of Police; that of 1846 goes more fully into details and confers the principal portions of the powers given by the recent statute (which Judge Edmonds proceeded to enumerate).

Judge Davies asked if these acts were repealed by the new statute.

Judge Edmonds—No farther than the general clause, repealing all inconsistent acts and parts of acts may be held to extend.

In 1853, a Board of Police Commissioners, with power to appoint and remove, was constituted. With the single exception that the new Police Commissioners are seven in number instead of three, these acts cover everything provided for in this statute. What, then, is there new in this matter, except the transference of power from the hands of three to seven?

Judge Davies—Is not the main question in the case whether the office is a new one or not?

Mr. Cutting—That is an important one, doubtless; but there are some half dozen in all.

Judge Edmonds—Does a new office mean as old one with a new name, exercised by new appointees? or something before unknown to our law?

Another constitutional objection to the law is founded upon that provision of the statute (s 15) which empowers the Commissioners to take possession of the telegraphic apparatus and other property of the city, now in the hands of the Police Departments. This is in fact a dedication of private property, that of the Corporations of the cities of Brooklyn and New-York to public uses, without making just compensation. There is an attempt to evade that principle by the provision that the ownership of the property shall remain in the cities, but such a provision becomes nugatory when the whole scope of the act is to deprive the owners of what alone makes property valuable.

Judge Edmonds apologized, as he sat down, for the imperfect manner in which he had been obliged to present the case in consequence of a severe headache. A necessary part of the plaintiff's argument was subsequently supplied more fully by Mr. O'Conor, who read from his points, at length. The last point read states the substance of all and is as follows:

The Constitution, by a necessary implication, forbids the Legislature to erect for permanent purposes of civil government new districts unknown to the fundamental law.

1. If that power existed in the Legislature, our cities, towns and villages, with their uninjured divisions, abolished, and all Courts and offices therein, might be abolished.

2. The newly formed circles, *arrondissements*, departments or cantons being unknown to the Constitution, their tribunals of justice, Judges, offices and officers being wholly unprovided for therein, all the provisions of the fundamental law regulating the selection of local officers would be inapplicable, and that greatness of patronage, which it was intended to withdraw from the central power, would be placed in the hands of the Governor and the revolutionary Legislature, as the reward of their usurpation.

Mr. Evarts replied, on behalf of the defendants, in an elaborate argument upward of two hours in length, which must necessarily be presented very imperfectly, so numerous were the considerations presented, and so masterly the reasoning. Its general course will be evident from the numbered points. The first was:

1. The plaintiff has no standing in Court for the relief asked or any part of it. The whole cause of action and the whole remedy affects only public and general, not private or personal interests.

The plaintiff describes himself as Mayor, corporator and taxpayer, and intimates rather than states that he is acting in connection with the majority of the Common Council. But, after all, he is simply Fernando Wood, with the honorable title of Mayor, the burdensome condition of taxpayer, and the equal condition of corporator. A piece of the Corporation cannot bring a suit. He comes into court as Fernando Wood in the individual sovereignty of a citizen, and hasn't even the grace to present his suit on behalf of all tax-paying citizens. Any citizen has the same right to do this that Fernando Wood has, and that right survives, whether Mr. Wood be successful or not. There can be no *res adjudicata* in the matter; citizen after citizen may haunt the courts with his constitutional objections for years, a decision in one case being no bar to a fresh action.

Nor does our law recognize any distinction in the protection of property, life or limb, or the preservation of good order between a tax-payer and another citizen. There is no allegation that the private property of Fernando Wood is endangered. There is no averment of private fears; his fears are as broad as the population, common and vital to every man; his alarms are for the public. He sets up no special injury to himself, actual or threatened. What he says in his complaint is: I am a citizen; a certain law has been passed upon which constitutional doubts exist; I ask the Court to interfere and stay action under this statute, to avoid certain threatened collisions and danger to peace and good order. An individual has no right to stay the operation of a law for the general cause of public peace and order.

2. No action lies to obtain judgment of a Court upon the constitutionality of a statute of the State as the object and end of the suit.

It is only as arising in, and affecting judgment in private or public actions, that Courts pass upon the constitutionality of a statute.

To declare the charter of a private corporation void, requires less discretion than to impeach the Legislature for a fraudulent evasion of the Constitution, as is attempted here, and yet it cannot be done. In the case of letters patent only the Attorney-General can institute proceedings to avoid them. But here it is contended that a party can file a bill, the *res* of which is that a law is unconstitutional, and stop the execution of such in the Court of first resort, until his suit is determined.

3. No preliminary action to prevent the assumption of office, or to enjoin the performance of official duties, lies even to the people, through the Attorney-General or otherwise.

The only remedy for usurpation of office is by action of *quo warranto* by the Attorney-General. This determines the title of the office, and leaves the discharge of the functions uninterrupted till judgment is given.

It is essential to the existence of government that its functions should be discharged, and it is not to be tolerated that the discharge of those functions should be prevented while an incumbent occupies the place. This would be to leave the public without an acting officer, and yet leave the office full.

Supposing the law to be constitutional—supposing, as is plain from section 31, that, after the organization of the new Board, the former Police Commission is annihilated and all its efforts suspended. The injunction may be powerful to destroy, but has no power to recreate what is destroyed. All controversies should be limited to a quarrel between two claimants, the functions of the office being meantime discharged by the incumbent *de facto*.

4. Every law is presumed to be constitutional, and every citizen and every officer, before judicial decision annulling the act, must take the responsibility of obeying or disobeying, of acting or refusing to act.

In the case at bar, if the new act be constitutional, the whole power within its purview is in the Commissioners created by it, and the old authorities are ousted.

If it be unconstitutional the old law authorities have their former functions, and the new commissioners attempting the exercise of their statutory functions will be intruders and usurpers.

An injunction operating upon either set of claimants of authority, will not invest with lawful right, *ad interim*, the other claimants. It will only paralyze, if it be obeyed, the whole public service involved.

If such things as this are to be allowed, the next thing will be an injunction to restrain members of a political party from voting at the polls, on the ground that its principles are contrary to the spirit of the Constitution; or, a bill to carry out the principle of the Dred Scott decision by preventing colored citizens from voting for Members of Congress; or to prohibit Chief Matsell from exercising the functions of his office, because he is an alien.

The question whether *ex parte* preliminary injunctions, before the question of the constitutionality of a law is passed upon, may be granted, whether a Judge can inhibit the operation of a law before he has examined it, is of vastly more importance than any others raised in this case. Suppose an injunction be served on Chief Matsell in time of riot, is it his duty obey it, or to obey the superior law which tells him to quell the riot?

There must be some rule on the subject. If the Judiciary can interpose between the Legislature and people, on a case made, and stay the operation of enacted laws without having the power to reinstate officers whom the law itself displaces, the public should know it.

V. The law is plainly constitutional.

1. It constitutes a new district composed of four coterminous counties, and organizes a police system for such district. The administration of the system is lodged in Commissioners, who receive their appointment (excepting the Mayor of New-York and the Mayor of Brooklyn ex-officio members of the Commission) from the Governor, with the advice and consent of the Senate.

2. If this substantive measure of uniting the counties be constitutional, the objection that the Commissioners are city or county officers (within the meaning of the Constitution) cannot be maintained.

As their functions extend over the whole district, they are officers of the State, having their duties in a circumscribed part of the State, embracing four counties, which contain two cities and many towns. [In the matter of Whiting, 2 Barb. S. C. R. 513, decided by Judge Edmonds.]

There is no express provision in the Constitution prohibiting the creation of a new territorial division, and any argument drawn from what is called its spirit, "the higher law," must be futile. If the judiciary are the final arbiters of the spirit as well as of the letter of the Constitution, it is impossible to see what right we have that is not subtended by the vague line marked by the spirit of the Constitution. The decentralizing principle is written on some pages, why not on this? If a county is to be a county, over and above the Legislature, why not say so in so many words?

These Districts having been created in a manner not prohibited by the terms of the Constitution, the Legislature lodged the police power in certain Commissioners. If it was competent for them to erect the District, it was competent for them to lodge that power in any place they pleased, not expressly prohibited by the Constitution. If the District and a Police District coterminous with it are constitutional, then regulations appropriate to a Police District are constitutional also.

If the Police Commissioners occupy offices such as existed at the time the Constitution was passed, whose functions extended to counties or cities, nevertheless they are not city or county offices, since their powers extend beyond county lines. When the State overlooks county lines and delegates State authority to new officers, they are no longer to be regarded as falling within the operation of the two first clauses of the section quoted.

VI. But if these Commissioners of Police be either city or county officers, they are officers "whose office "has been created by law" since the adoption of the Constitution, and so they may be appointed as the Legislature may direct. [Laws 1841, ch. 315, p. 469. Laws 1853, ch. 228, p. 440.]

The last part of the section removes the question from all doubt. The Convention were not quite so foolhardy as to say that every new office created by a future Legislature must be cast in the old mold.

Is this then a new office? Up to 1841, the police system of this city was a piecemeal ragged affair. Up to 1853 it was a police forming a part of and under the government of the Corporation. In that year, for the first time, a Board of Commissioners of Police was created, with duties, the more important of which, such as the trial and displacement of Police for cause had never been lodged anywhere before. It was a substantially new creation.

If the question were regarding a Police Commission, limited to the City and County of New-York, the answer would be that, at the passage of the Constitution, no such office existed.

If the law of 1853 is unconstitutional, the plaintiff, who appears as its defender, has no standing in Court.

How much clearer is it when we put the two lines of reasoning together, when we consider that this is neither a local office nor one known to the Constitution.

VII. The injunction should be dissolved, whatever doubt may exist as to the unconstitutionality of the law. Whichever party needs the aid of the law to obtain possession of the public office in controversy, should be left to invoke it, and in the meantime the party in possession will be officer *de facto* and perform the public duties.

Mr. Evarts concluded his very able remarks with an eloquent statement of the necessity and wisdom of the Metropolitan Police act, to be found in the fact that a people who are a unit for all purposes of crime should be a unit for the purposes of the detection and punishment of crime. If this be the law of the land, the police power is in the hands of the parties enjoined, and can never return to those from whom it has departed, however many injunctions may be served on them. The public necessity is great; the presumption of constitutionality is strong.

The further hearing was postponed till to-morrow (Friday) afternoon, at 4 o'clock.

CITY ITEMS.

ITALIAN OPERA.—*Il Trovatore* will be performed this evening at Niblo's, Madame Gazzaniga sustaining the role of Leonora, and Miss Phillips that of Azucena—a part that has been but indifferently filled since she left us. Messrs. Brignoli and Amodio will also appear.

BENEFIT OF LOUISA PYNE.—To-morrow night Miss Pyne takes her benefit and makes her last appearance in America for the present. She has selected the opera of "Fra Diavolo," and will also appear in "Midas" with Mr. Burton. The house will undoubtedly be crowded with her sincere admirers, who will assemble to wish her God speed and bid her a regretful farewell. A meeting of her friends takes place this afternoon at the St. Nicholas to perfect arrangements for the presentation of a parting gift to the English skylark.

The Board of Councilmen last night agreed with the Aldermen, 32 to 14, to repudiate the new Police Law.

A BOSTON ITEM.—*The Daily Times* has been purchased by the proprietor of *The Herald* and merged in that journal.

PARADE OF TARGET COMPANIES.—The long talked of parade of the Target Companies came off yesterday. The mild temperature of the atmosphere and the promise of one of the "grandest parades ever known "in New-York" tempted many people to venture forth. In accordance with a resolution by the Common Council, flags were displayed from the City Hall and other public buildings, and the Governor's and other rooms in the Hall were thrown open to the public.

Half-past 9 o'clock was the hour mentioned for the formation of the line, but at that time there were but few companies on the ground, and over an hour and a half elapsed before the companies commenced arriving, and then they came all in a heap, so that the greatest confusion prevailed, and a further delay of an hour was experienced in perfecting the formation of the line. The line was formed on Fourteenth street, the right resting on Broadway, the companies composing the division being arranged in the order of the wards which they represented.

The men appeared in all sorts of uniforms—some with red flannel shirts with black pants—some in blue shirts, faced with red, pink and blue, and drab pants—some in black suits—all being trimmed with silver and and gold tinsel and a superfluity of buttons. The caps worn were of every variety, comprising the army-regulation cap—Continental hat—common cloth cap with band of tinsel—fancy caps of blue and red velvets and silk, set off with stars and spangles—and striped cotton night-cap. The Generalissimo and his subordinate officers were provided for the most part with the "regulation uniform." These officers were provided with excellent horses, but few of them seemed acquainted with a seat in the saddle.

The Generalissimo with his staff reviewed the Division, and as he rode down the front there was a tremendous outburst of music from the bands—such as "Hail Columbia," "See the Conquering Hero comes," and other airs. The flags, of which there was no lack, were of every conceivable size—the American flag and national ensign in silk and bunting—the stripes of every shade from light scarlet to deep crimson, and the decorations of stars, spread eagle and inscription "E Pluribus Unum," in every style of arrangement.

The line finally "broke into column" and shortly after noon commenced moving down Broadway. The column, aside from the various staff officers, numbered sixty-eight companies and nineteen bands, and was formed in two divisions. The procession passed the City Hall in review before the Mayor and several members of the Common Council, his Honor taking off his hat and smiling blandly at the salutes of the officers.

The procession was divided into two parts—the first being the regulars who had fully coincided with the views issued (by Mayor Wood) in regard to the parade, and the second being a "split," and comprising one division who refused at first to parade at all on the ground that the affair was got up for political capital. This division did, however, turn out, and were reviewed by the Mayor in about an hour after the first "grand" division had passed.

The review was all over by 3 o'clock, and the streets soon resumed their wonted appearance.

No accidents of any serious nature occurred to mar the "festivites of the day."

As we presume we shall have wonderful stories of ten, fifteen or twenty thousand men under arms, we may as well state that, aside from the Brooklyn and Jersey City companies (which, by the way, were among the very best), there were not more than two thousand men and boys under arms.

A company from the Eighth Regiment [Washington Grays] intend making an excursion to Boston on the 16th June, to participate in the celebration of the Battle of Bunker Hill. They will number 125 men, and will be accompanied by Dodworth's First Band. They expect to be gone four days.

THE ALLEGED PARDON FORGER.—Justice Connolly yesterday received a telegraphic despatch from the Hon. B. B. French in Washington, D. C., in answer to one sent him on Wednesday touching the case of John Scatchard, alias Crosse. Mr. French says that the forgery committed upon him, by which he was defrauded out of $100, purported to have been done by Le Croix, consequently he has no complaint to make against Scatchard, Le Croix being the man he wants. A decision in the case of Scatchard for his alleged conspiracy with various other parties to procure the liberation of the forger Huntington from State Prison may be expected to-day. Mr. Porter, counsel for the prisoner, asked for his discharge on the ground that there was not evidence sufficient to hold him.

ESTATE OF CAPT. GEO. BRADISH.—A. J. Bleecker & Co. will sell to-day this fine property, situated at Harlem, and consisting of 225 lots between Second avenue and East River, One-hundred-and-eighth and One-hundred-and-thirteenth streets, affording purchasers an unusually good opportunity of desirable investments. This is one of the few old estates left unsold in that portion of the island, and every lot offered will be sold without reserve. The terms are unusually liberal.

In the discharge of his sanitary duties, Health Warden Slowey of the Tenth Ward discovered in the street, at the corner of the Bowery and Delancy street, the remains of a still-born male child. Coroner Connery was informed.

REAL ESTATE.—The following sales of real estate were made yesterday by A. J. Bleecker & Co.:

1 lot cor. 3d-av. and 25th-st., 24.4x84	$7,200
1 lot adjoining, fronting on the avenue, same size	5,250
1 lot adjoining, fronting on the avenue, same size	5,000
Leasehold house and lot No. 35 London-terrace, size 24x117.6, three renewals of 21 years each	3,000
3 lots on 113th-st., west of 2d-av., 25x84 and 112	315
The south side of the block bounded by 47th-st. and East River, 100.5x475 ft., with water right	8,750
The north side of block, same size as above	8,000
1 lot cor. 47th-st. and 1st-av., 25.5x100	1,500
3 lots adjoining, same size	1,210
1 lot cor. 1st-av. and 46th-st., 25x100	1,250
3 lots on 1st av., adjoining, same size	1,155
2 lots and house cor. 3d av. and 72d st., 22x90	2,900
1 lot on 3d-av., adjoining, same size	1,040
3 lots on 72d-st., adjoining the above, in rear, 20x102.2, each	850
4 lots on 78th-st., near 5th-av., 25x102.2, each	675
2 lots corner 4th av. and 105th-st., 25.2x80, each	750
4 lots on 77th-st., near 1st av., 25x102.2, each	750

ARREST OF SHOP LIFTERS.—Ann O'Mara, alias Ann Smith, and Eliza McCarty, both young women, were yesterday arrested charged with shop lifting at the store of Davis & Roberts, No. 181 Eighth avenue, where, it is alleged, they attempted to steal a piece of silk; and also at the store of Owen Jones, No. 169 Eighth avenue, where they stole two pieces of fancy silk. On searching the premises, about $150 worth of silks were found in their possession, for which owners are wanted at the Jefferson Market Police Court. The accused, together with a boy named Wm. B. Davidson, who was in their company, were taken before Justice Davidson and committed for trial. Ann Smith lives at No. 163 Prince street, and Eliza McCarty at No. 336 Washington street.

EMBEZZLEMENT BY PORTERS.—Wm. Goodyear and Ambrose Bown, for many years porters in the employ of Bainbridge & Co., stationers in Cliff street, were arrested by Officers Thomas and R. Sampson, of the Detective Police, charged with embezzling from the store of their employers goods to the value of $50. The firm have further ascertained that within the past few years thousands of dollars worth of goods have been stolen from their store. They now suspect the two porters of being the thieves, and allege that they sold the stationery from time to time to one Dwyer, a dealer in second-hand boxes, &c., in Maiden-lane. Dwyer was also arrested, and all three were locked up for trial.

CAPTURE OF ALLEGED RIVER THIEVES.—Three young men, named Bryan Brady, Washington Harrington and Samuel Harding, were arrested early yesterday morning, charged with breaking into the cabin of the sloop Wave, lying at the foot of Charlton street, North River, and stealing therefrom a marine clock. Brady was seen, while making his escape from the sloop, jumping into a small row-boat, in which the other prisoners were, and Officer Roberts of the Eighth Ward Police arrested him and his companions. They were taken before Justice Davison, and locked up for trial in default each of $2,000 bail.

SUICIDE OF AN INSANE WOMAN.—Mary Maloney, a native of Ireland, 43 years of age, died yesterday at the Bellevue Hospital from the effects of a fracture of the sternum and internal hemorrhage, received on the 19th inst., when she, while laboring under an attack of delirium tremens, jumped from a fourth-story window of her residence, No. 526 Second avenue. Coroner Gamble held an inquest upon the body. Deceased had long been very intemperate in her habits.

PICKPOCKETS IN THE PROCESSION.—Several alleged pickpockets were arrested yesterday for relieving or attempting to relieve the pockets of persons who were witnessing the military parade yesterday. Most of them, however, after examination, were discharged, the evidence against them being insufficient to warrant their being held for trial. James Lee, charged with attempting to rob Mr. James Conway, of No. 223 West Twenty-fifth street, of his watch, and three other boys, were locked up by Justice Connolly for examination.

SUDDEN DEATH.—James Wall, a bar-keeper in the grocery and liquor store No. 289 Rivington street, died very suddenly at 1 o'clock yesterday morning, of apoplexy. He was in a backroom of the premises at the time, and though but a few minutes before appeared to be well, suddenly fell and expired. An inquest was held upon the body. Deceased was 52 years of age.

[Advertisement.]

HALLOTYPES! PHOTOGRAPHS! DAGUERREOTYPES!

J. GURNEY challenges the photographic world to produce Pictures in the above styles equal to those made at his Photographic Palace of Art, No. 349 Broadway.

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FREDRICKS'S TEMPLE OF ART.

HALLOTYPES, PHOTOGRAPHS, DAGUERREOTYPES, AMBROTYPES.

No. 585 Broadway, opposite Metropolitan Hotel.

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BRADY'S IMPERIAL PHOTOGRAPHS!

Being the most perfect as to size and correctness ever known to have been taken, are well worthy the attention of those desiring likenesses of themselves, friends, or copies of daguerreotypes, and can be procured on reasonable terms, at No. 359 Broadway, over Thompson's.

[Advertisement.]

WOMEN AND CHILDREN may have Phrenological examinations, with charts and full written description of character, with advice, by Mr. FOWLER, at No. 308 Broadway, near the Park. Private rooms for Gentlemen and Ladies.

[Advertisement.]

SPRING CLOTHING!

Spring Raglans	$5	to	$14
Cassimere business Coats	3½	to	10
Elegant blue Dress Coats	8	to	15
Black Cloth Frock Coats	5½	to	10
Super black Cloth Frock Coats	10	to	14
Custom-made Frock Coats	14	to	20
Cassimere business Pants	1½	to	3
Cassimere dress Pants	4	to	6
Rich moire antique and silk Vests	2½	to	5
Cassimere business Vests	1½	to	3

At EVANS' Extensive Clothing Warehouse, Nos. 66 and 68 Fulton-st., between Gold and Cliff-sts.

[Advertisement.]

BOYS' AND YOUTHS' CLOTHING.—P. C. BARNUM & CO., Nos. 194, 196 and 198 Chatham-square, having given their especial attention to this particular branch of their business, are now prepared to exhibit a larger and better selection of Boys' and Youths' CLOTHING than ever before offered to a discriminating public. One of their spacious salesrooms having been exclusively dedicated to the wants of the juveniles, will be found replete with every description of apparel necessary to their wants.

P. C. BARNUM & CO., Nos. 194, 196 and 198 Chatham-square.

[Advertisement.]

FARMERS' WIVES.—Their True Social Position: Women of the Revolution; English Women; Routine of American Housewifery; Her Home Influences, fully described in this week's LIFE ILLUSTRATED. Pictures and Perils of Arctic Navigation; A Trip over the Alleghanies; The Good Influences of Homes as they should be; The Bedottites; City Gossip; News of the Week; The Bread Question, etc. Price 4 cents. Newsmen all have it.

[Advertisement.]

CONSUMPTION.—Its treatment by "Homœopathy" and "Water Cure" reviewed. See first page, this day's paper.

BROOKLYN ITEMS.

RUN OVER.—A little boy about five years of age, son of Mr. Albert Stringham, residing at No. 57 Caril street, was run over in Myrtle avenue on Thursday afternoon by one of Hendrickson's express wagons, heavily loaded, the wheels passing over the boy's legs near the ankles, mangling them in a shocking manner. The boy was taken up insensible and conveyed to his residence, and Dr. Mitchell was summoned to attend upon the little sufferer. It is feared that amputation will be necessary. The driver of the wagon did not stop to ascertain the extent of the injuries his carelessness had inflicted, but whipped up his horses and was soon out of sight. He has not yet been arrested.

NEW-JERSEY ITEMS.

NOMINATIONS FOR THE FIREMEN'S ELECTION.—The delegates from the various Fire Companies in Jersey City met at the house of Empire Hook and Ladder Company, No. 1, on Wednesday evening, to nominate candidates for Chief and Assistant Engineers, and for the Fire Commissioners provided for in the new law, all of whom will be voted for at the election to be held on Tuesday, May 5.

Chief Engineers—Samuel A. French, for reëlection, and Jacob Z. Marinus.

Assistant Engineers—Adrian B. Reynolds and Wm. L. Stevens for the First Ward; James Wallace and James McLaughlin for the Second Ward; John Howeth and John B. Ralph for the Third Ward; and John Coyte and John O. Haybeck for the Fourth Ward.

Fire Commissioners—D. S. Gregory, jr., Chas. Martindale, Chas. Scott, D. W. Stone, Thos. Royle, R. K. Terry, J. Clarke, Geo. Dempsey, Wm. White and H. C. Smith.

NEW FERRY-BOAT LAUNCHED.—The new ferry-boat for the Jersey City Ferry was launched from the yard of Devine & Burtis at Red Hook Point, Brooklyn, on Wednesday at 5 o'clock, and was towed to Jersey City, where she was visited yesterday by a large number of people. The new boat is named "John S. Darcy," the President of the New-Jersey Railroad Company, to which the ferry belongs. The new boat is 185 feet long, 32½ feet in breadth, and has 12½ feet depth of hold. Reed & Birbeck of Jersey City are constructing her machinery. Her cost will be about $45,000.

LAW INTELLIGENCE.

UNITED STATES CIRCUIT COURT—APRIL 23.—Before Judge NELSON.

DECISIONS IN ADMIRALTY—COLLISION IN THE EAST RIVER.

Dennis Fagan et al. agt. The steamtug Pluto.

NELSON, C. J.—This libel was filed by the owners of the schooner Charles Hopkins against the Pluto, to recover damages for a collision in the East River. The wind was southwest and the tide ebb; the schooner was beating down the river on her larboard tack, and was crossing from the Brooklyn to the New-York side toward the foot of Jackson street; the Pluto was coming up the river on the New-York side, with a heavy tow on her larboard quarter; she was ascending against the tide at a rate of speed not to exceed a quarter or half a mile an hour. The schooner came about nearly ahead of the tug, and sagged down upon her, causing the damage that occurred. The person in charge of her did not see the Pluto until he had come about, or was in the act of coming about. He might have run nearer the New-York shore with safety before he tacked, and thus have avoided the collision. The tug stopped immediately, and seems to have done everything, under the circumstances, in her power to prevent the injury. It is apparent that the cause of it is attributable to the want of a proper lookout on the schooner. If the hands had seen the tug in time, the collision could have been easily avoided.

It is said that the Pluto was in fault in not being in the middle of the river, or as near as might be, regard being had to other vessels navigating it, as directed by the State law. But it does not appear that this omission led to the collision, or in any way contributed to it. It furnished no reason for the schooner's unnecessarily tacking about ahead of the steamer. This was gross inattention to duty on the part of the person in charge of the vessel. The schooner, at the time, was not in command of its ordinary master, but in charge of one temporarily engaged, and who was manifestly incompetent to navigate her at a place where skill and attention were indispensable.

The decree of the Court below, dismissing the libel, we think is right, and should be affirmed.

Thomas Bell agt. Thomas Hunt.

NELSON, C. J.—This is a libel filed by Bell to recover a balance due for raising and removing the steamboat Cricket off and from a sand bar, at the mouth of Shrewsbury Inlet, N. J., where she had been stranded. It appears that Hunt owned the steamboat Confidence, which ran between the port of New-York and Shrewsbury Inlet, and that her engine having failed, he employed and chartered the Cricket on the 4th July, 1849, of Peck, the owner, to take her place; and that, while thus employed, she was stranded, as above stated.

The libelant, Bell, was engaged to get her off the sandbar for $3,150, of which sum a balance of $550 remains unpaid. The Court below decreed for the respondent, and dismissed the libel.

There is no sufficient evidence that the contract was made by Hunt with the libelant for the service in question. On the contrary, the weight of it is, that it was made by Peck, the owner. Hunt was present when it was made, but for aught that appears, took no part in the negotiation. Peck did. Indeed, the libelant was given to understand by Hunt, according to the proof, that Peck was the responsible man at the time the contract was made.

It is supposed that Hunt may be made liable as charterer to the libelant. But, aside from the consideration that the contract was made with Peck, and not with him, it does not appear upon what terms the Cricket was chartered. She may have been navigated by the master and hands of the owner, and hence the charterer not responsible at all for the safety of the ship. There is no foundation, therefore, laid for the inference sought to be raised of the liability of the respondent on this ground.

We think the decree below should be affirmed.

UNITED STATES DISTRICT COURT—April 23.—Before Judge BETTS.

CHARTER PARTY—TIMBER—PLEADING—WITNESS.

Charles H. Hayward agt. A Quantity of Timber, &c.

This libel was filed by the owner of the brig A. H. Wass to recover the amount of charter-money on a charter of the brig executed by the master for a voyage from this port to the port of Cambridge in Maryland, with privilege of another port, the charterer agreeing to furnish a full cargo of timber and lumber. The vessel went to Cambridge, but there was not a full cargo there, and at the other port the master was informed that he could have the balance of his cargo if he would take certain timber. The master, deeming the timber too large to go on the brig, declined to take it, and brought this part cargo to this port and claimed the full charter-money.

Held by the Court, That, under the ruling of the Circuit Court of this District in the case of Beecher agt. Bechtel, decided in September, 1853, the freighter violated his contract if he failed to supply the cargo stipulated, and of a size and shape, and at the sides of the ship in a condition fitted for being taken or stowed on board.

That the master is a competent witness, unless it is proved he has other interest in the cause than that of charterer. He gave the charter party as *master and agent*.

That the full cargo stipulated was not supplied at Cambridge; that the charterer having the "privilege of one landing place on the river," it devolves upon him to prove that he pointed out such landing place to the master, and that sufficient timber was provided for her alongside the ship to complete the cargo.

That if the case is decided upon the issue as shaped by the pleadings, the claimant fails to prove that he produced his timber alongside of the vessel within reach of her tackles so as to constitute a performance of his contract, and the libelant would accordingly be justified in returning to his home port and demanding damages consequent upon the breach of the charter party.

That the claimant is estopped by the pleadings from denying that the charter party was fulfilled in respect to Cambridge, and that the libelant establishes his right to freight for a full cargo according to the charter party. Decree for libelant with a reference. For libelant, Messrs. Beebe, Dean and Donohue; for claimant, Messrs. Platt, Gerard and Buckley.

TOWING CONTRACT—NEGLIGENCE.

Charles A. Heckscher agt. The Steamboat Boston.

The libel was filed in this case by the owner of the canal boat Union, setting up that in December, 1854, the Philadelphia Steamtug and Navigation Company, owners of the Boston, agreed to tow the Union with her cargo of coal from Philadelphia to Bordentown, and from New-Brunswick to New-York, and that the Boston did take her in tow at New-Brunswick, but by carelessness and negligence she was sunk on the way; and the libelant claimed to recover $2,500 for the value of the canal boat and her cargo.

By the Court—The undertaking sued upon in this case was not that of a common carrier, nor fully that of towage; the agreement to tow the canal boat from New-Brunswick to New-York being qualified with notice to the agent of the libelant that the canal boat would be allowed to go in the line that day, but only at his risk and that of her owners. It was at the close of navigation, and when the river was greatly impeded with ice, so much so that the steamboat would not accept more than half her usual burden of towage.

The grounding of the steamboat on her passage down was occasioned by the natural incidents of navigation at that period of the year, and is not chargeable to want of skill, or culpable negligence in the officers and crew of the steamboat. Nor was the loss of the canal boat and her cargo owing to the fault of the tug or her master. If it is properly attributable, in any degree, to fault or inattention in her management, it is imputable to the agent of the libelant in charge of the canal boat at the time.

The case hinges upon questions of fact. The evidence is multifarious, and no way in harmony on several points; but, in my judgment, the weight of it exonerates the steamboat from blame in the occurrence, and the libel must accordingly be dismissed with costs. For libelant, Messrs. Butler, Evarts and Southmayd; for claimants, Messrs. Benedict, Burr and Benedict.

FORFEITURE—EVIDENCE—NEW TRIAL.

The United States agt. A Quantity of Embroidered Collars, Chemisettes, Sleeves and Flounces.

This was a libel filed to forfeit the goods, seized on land, under Section 66 of the Revenue act of March 2, 1799. The owner pleaded the general issue, and the cause was tried, Sept. 23, 1856, before a Jury, which rendered a verdict in favor of the United States, and against the property on all the charges against it. The claimant now moved for a new trial on a case made, on the ground that the verdict was unauthorized by the evidence, and against the charge of the Court, which was, that in order to forfeit the goods the Government must prove that they were the manufacture of some foreign country, and were imported and landed in the United States without payment of duties. The claimant, Edward J. Lane purchased the goods after their seizure, and with notice that they were charged with being smuggled. When seized they were in possession of one James H. Ross, and claimed to be his property; and it was proved that at the time of seizure Ross made statements which might well be understood to be clear admissions that he was the owner of the goods, and that they had been smuggled.

Held by the Court, That the verdict was not without evidence to support it. There was no direct and positive proof that the goods were foreign or smuggled, but the evidence well warranted the verdict if the Jury believed that the owner intended to acknowledge that they had been brought in clandestinely from abroad and had not paid duties.

That Lane, having taken his right after the seizure, and with full notice of their condition, holds them subject to the legal liabilities they had incurred in the hands of Ross.

That it was solely matter of fact for the Jury to determine whether the evidence supported the charges, and that no legal reasons are shown for disturbing their verdict.

Motion for new trial denied and judgment ordered on the verdict. For the United States, Mr. McKeon; for claimants, Messrs. Beebe, Dean and Donohue.

COSTS—WITNESS FEES MUST BE PAID.

J. A. and J. D. Secor agt. The Steamboat Highlander.

This was an appeal from a taxation of costs by the Clerk, allowing an item of $110 as witnesses' fees to the libelants. It appeared that the witnesses were in the libelants' employ on day's wages exceeding the compensation of witnesses, and that they continued to receive their per diem compensation while attending Court, and this was the only evidence of the payment of witness fees to them.

Held by the Court, That the right to recover witnesses' fees is derived wholly from statutory authority.

That the law nowhere authorizes the substitution of an equivalent debt or equity owing to the suitor by a witness as payment of his fees by the suitor. The suitor acquires the right to a judgment for his witnesses' fees only on the fact of his having actually paid the money. The taxing officer is not empowered to take an account between the witness and the party who summoned him to ascertain whether a balance on their general dealings remains payable to the witness equal to the amount of the fees claimed.

Appeal allowed and taxation overruled. For appellant, Messrs. Benedict, Burr & Benedict; for appellee, Mr. [illegible].

SUPREME COURT—SPECIAL TERM—APRIL 23.—Before Judge MITCHELL.

THE EMPIRE CITY BANK.

This matter came up this morning on a motion to