CITY ITEMS.

An extra performance of the French Dramatic Company at the Metropolitan Music Hall (opposite Niblo's), will take place to-morrow (Saturday) evening. The Company has met with much success.

NEW GUTTA PERCHA LIFE-BOAT.—There was on exhibition, at No. 84 Broadway, the other day a new life-boat, composed almost entirely of gutta percha, which it is claimed, is destined ere long to supersede all other kinds now in use on account of the advantages they will possess over those made of wood or iron in not being liable to damage from collision with vessels, rocks, &c. Had the Central America been properly provided with gutta percha life-boats (so say the inventors), in all probability every person on board could have been saved, as in that case all the boats except two were broken to pieces by being dashed against her sides by the waves. The boat on exhibition is 16 feet long by 5 feet beam, and 2½ deep. The gutta percha, of which it is made, is three-quarters of an inch thick, cast in one piece, with strong ribs of the same material. The keel, kelson and gunwale only are of wood. It is estimated to carry twenty-five persons very comfortably and safely in a rough sea. In order to illustrate the qualities of the boat in resisting injury by collision with other vessels, or by being dashed upon rocks, a gentleman interested in their manufacture struck the sides of the boat, and allowed others to do the same, with a large beetle, the result of which experiment proved highly satisfactory to all present. The cost of the gutta percha boat will be about the same as those built of iron, while the old stock, that is the gutta percha of the old boats, as they are thrown aside, will bring within a few cents of the original cost. We shall probably soon hear more of the invention.

THE SWILL-MILK LIBEL CASE.—The case of Frank Leslie, arrested on the complaint of Alderman Reed on a charge of libel, was examined yesterday afternoon before Justice Quackenbush at the Jefferson Market Police Court.

Mr. John Graham appeared as counsel for Alderman Reed—Mr. Ashmead appearing as counsel for Mr. Leslie. The alleged libel is contained in a wood-cut published in Mr. Leslie's paper on the 17th instant, a description of which has been before given in THE TRIBUNE.

Henry C. Watson being duly sworn, says—I reside at Fordham, Westchester County; my place of business is No. 13 Frankfort street; I am an editor connected with Frank Leslie's paper. I have been connected with the paper since it first originally started, and have been one of the editor's since the last twelve months; as far as I know the paper has been published in the city of New-York; it is published from No. 13 Frankfort street; don't remember how long it has been published there; as far as I know Mr. Leslie is proprietor of the paper; I know of no other proprietor; I am employed by Mr. Leslie; I do not know who pays the other employees; Mr. Wood is the book-keeper; the paper now exhibited, bearing date July 17, is one of Frank Leslie's papers.

Q. Do you know who is the artist that made that cut in the paper? A. I do not know who the artist is that made that cut; I have no information from any source as to who the artist; I have no belief as to who the artist was—and I have no belief; there are several artists in the establishment, a great many—Mr. Gunn, Bellew, Mr. Wallins, Mr. Nash, Mr. Eytinge; I know Mr. Albert Berghaus—he is also one of our artists; I never heard him or Mr. Leslie, or any one, say that he made that cut; I do not know where he is to be found; he lives in Hoboken.

Q. Is he a man of family? A. I don't know about his ancestors; he is not a married man; he works at Frankfort street; I do not know of his drawing or designing this cut; do not know of any connection he had with this cut.

Q. Do you know who ordered the words under this cut—viz., "The Sixteenth-street Distillery cow stables, cows and milkmaids undergoing the process of whitewashing by Aldermen Tuomey, Tucker and Reed?"—A. I think Mr. Leslie; I believe it was in his handwriting; [illegible] given into my hands in the regular course [illegible]; one of the engraver's boys or the foreman of the printing-office gave it into my hands; don't know how many copies of the paper were issued—that is no business of mine; never heard Mr. Leslie say why he made this publication.

Cross-examined—I have no acquaintance with the mechanical part of the engraving; I have no acquaintance with the practical part; I think it is the usual custom to have the pictures touched up by different artists; I can judge nothing from the style of this cut whether it was touched up by one or more artists; the words under the illustrations are printed in; the artist executing the picture has, as a general thing, no knowledge of the literary matter that is added; it is customary sometimes to send cuts to different artists, to insert words or other figures.

Ald. Reed being duly sworn, says that several matters referred to in the affidavit are true.

Q. by Mr. Graham (exhibiting the cut)—Which of the figures represents you, which Ald. Tuomey, and which Ald. Tucker. A. That one (pointing to one of the figures), represents me, that Ald. Tucker, and that Ald. Tuomey, and very good likenesses they are too, for wood cuts. One of the figures, I believe, is intended to represent Mr. Johnson, the proprietor of the swill distillery.

Q. What were the matters referred to you? A. The sources from which swill-milk was derived, and whether swill-milk as sold in the city of New York was poisonous and detrimental to health, and if so to present an ordinance or ordinances to prevent the further sale of the same

Q. With what stables did this investigation commence? A. With Sixteenth street and Thirty-ninth street, located between Tenth and Eleventh avenues; the stables in Sixteenth street are represented as being owned by Bradish Johnson, and in Thirty-ninth street by a Mr. Moore; they own the ground and building, and lease the stalls to the persons having cows there; the swill for the Sixteenth street stables was supplied by Johnson's distillery on the block bounded by Ninth and Tenth avenues; Mr. Leslie appeared before our committee to sustain the war against the swill milk interest, (and was treated very courteously too;) I was one of the majority of the committee that consisted of five who made a report adverse to Mr. Leslie's views; there was no motive on my part but a sense of duty as regulated by my oath of office, that prompted me to make such a report; in no way, manner or shape did I receive a bribe from any one—referring to the picture—(and so horrid a thing as that could not have been conceived in the brain of any individual.)

Judge—Alderman, you need make no such comments.

Q. What was Mr. Leslie's motive. A. I know of no motive of Mr. Leslie's except to black mail other parties.

Q. Where did you get this paper? A. It was bought.

Counsel (interrupting)—We will admit the matter as to the publication. Mr. Leslie is the publisher and responsible party.

Ald. Reed (earnestly)—I may find some other responsible party before I get through with them.

Cross examined—As one of the Committee I investigated the matter referred to the Committee of the Board of Health; we reported adversely to Mr. Leslie; Mr. Leslie's views were that swill milk had poisoned from 8,000 to 10,000 children in this city in the course of the year, and nothing of that kind appeared in the evidence; we reported that swill milk was not poisonous, basing our report upon evidence; we examined Dr. Francis, but did not base our conclusion upon his presumptions and evidence; Dr. Gardener was examined before the Committee, but did not base our report upon his evidence; I heard of the poisonous qualities of swill milk some two week before I was appointed, or before anything was said by Mr. Leslie; the charges were made some two or three weeks before the investigation; the presumption is that this fact coming to the knowledge of the swill-milk men, they removed diseased cows and placed healthy ones in the stables.

Mr. Leslie's counsel proceeded to ask some questions relative to the testimony and in regard to the report, but was interrupted by the magistrate, who ruled the questions irrelevant, and calculated to make the matter more public.

Ald. Reed—That's it—that's it—they are particularly desirous of obtaining publication in the papers. In answer to a question about the cut, Ald. Reed took the paper, held it up and most earnestly described the various figures—one of which he said looked like him—there was no mistaking it—even his child knew it and said "he had seen papa in the paper." It looks more like me than it looks like a thief.

Q. What is the meaning of those figures $50 attached to your coat-tail? A. I don't know, I suppose it was intended to set forth that I had received a bribe—(witness much excited), the picture emanated from the brain of some individual who had left the country.

Magistrate—(interrupting)—I cannot allow any such remarks.

Examination resumed—Before the Committee was appointed, I called upon Mr. Leslie, and, in conversation with a sub-editor about the matter, approved of his motives, and said that I would be glad to assist him in the investigation; I never saw Mr. Bradish Johnson in the whole course of my life, and wouldn't know him from Adam; I know Mr. Smith, the foreman, but he is not a particular friend of mine, I have known him six or seven years; I had no conversation or interview with Mr. Smith, other than at the meetings of the Committee; he desired a full and fair investigation; I wish to explain that, when I called upon Mr. Leslie, I was fully impressed with the belief that swill milk was detrimental to health, and should continue to be so still if my mind had not been disabused by acting as a member of this Committee in the swill milk investigation; facts were brought to my mind before the Committee which disabused it of such an impression.

Q. Why were you at that time of opinion that swill milk was detrimental to health, and was it because the swill made the beast unhealthy, and the milk therefore poisonous? A. I knew to the contrary as regards the beef; I was governed in my opinion of the matter as other people are, never having given the subject a proper investigation; the first time I called, about two weeks before the Committee was appointed, I saw the sub-editor; the second occasion I received a note and saw *this man* (pointing to Mr. Leslie).

Mr. Graham—We call him Mr. Leslie.

Witness—I saw *this man* (pointing to Mr. L. again).

Upon a mutual understanding of counsel, the investigation was closed, and the papers ordered to be sent to the Grand Jury.

Information is wanted by Mrs Letty Price (or Williams), late of Baltimore, of her daughter Nina, who, it is said, married a man by the name of Robinson, and lives in New York. The said Letty Price was a slave, and was sold some thirty years ago to go South, her children having been sold also. Letty is now free, and is anxious to see her daughter. Any one giving such information, or making inquiries, would much oblige by sending it, or calling on Rowland Johnson, No. 54 Beaver street, or Box 2,427 Post-Office, New-York. The said Nina Robinson is a light-colored woman. Papers friendly to the cause will please copy.

THE MYSTERIOUS AFFAIR IN AMITY STREET.—There were three physicians in attendance on the late I. V. James during his brief illness in Amity street, and all of them were M. Ds. We are requested to say that if there are any doubts in the public mind about his case, the opinions of these gentlemen may be readily had, both as to his condition and the wisdom of their course.

CRIMES AND CASUALTIES.—At a late hour Thursday night as Munson Hancroft, a lodger at Tammany Hall, was crossing the Park, he was suddenly pounced upon by two fellows, (said to be Five Point thieves,) who, no doubt, intended to rob him. Before they had time to perpetrate any violence Sergeant Kelly, of the Second Precinct, happened to pass near by, and seeing the attack ran to the spot, and with the assistance of Mr. B. arrested the fellows and took them to the Station-House. The prisoners gave their names as Thomas Muller and William Tummey. Justice Connolly sent them to prison yesterday morning.

The same night Officer O'Connor, of the Twelfth Precinct, while trying to disperse a gang of loafers, in order to prevent a disturbance, was beaten in a savage manner by Mike McInery, Edward Hays and Lawrence Lanahan. The injured officer was taken to the Station-House, and subsequently the parties above-named were arrested and committed to prison for examination by Justice Brownell.

A lad named Marius Ficks, while hanging on the back of a carriage in the Bowery, yesterday afternoon, received an injury which will probably cripple him for life. His legs became tangled in the wheels, and one of his thighs was broken, in addition to which he sustained other bodily injuries. He was taken to the residence of his parents, No. Rivington street.

Thomas Lewis and Elijah Pendleton, two colored men, got into an altercation at No. 152 Church street, on Thursday night, and in the course of the dispute the latter was stabbed twice in the thigh with a sword-cane, and dangerously wounded. Lewis was arrested and locked up for examination. The dispute is said to have occurred in consequence of an insult offered Lewis's wife by Pendleton.

Philip Smith was arrested the same evening in the First Precinct, charged with a murderous assault upon a woman named Mary Fury, of No. 61 Washington street. It is alleged that he struck her over the head with an ax, inflicting injuries that will probably prove fatal. Smith was sent to prison.

A young man named Chas. Magnes was arrested yesterday by Officers Ackerman and Smith of the Tenth Precinct, charged with being an accomplice of Henry White and Geo. Lipson, previously arrested for breaking open the trunk of Diedrick Muller, in Baxter street, and stealing therefrom $70. Magnes is also charged with entering the house of Mrs. Hine, No. 111 Reade street, and stealing property therefrom to the amount of $300. In his possession was found several pawn tickets and a bowie knife. Justice Brennan locked him up.

REAL ESTATE.—Sales of real estate at auction, July 30, 1858, by Adrian H. Muller:

1 lot, northwest corner of 8th av. and 52d-st., 25x89	$5,250
1 lot, west side of 8th-av., bet. 52d and 53d-st., 22x80	3,300

DROWNED WHILE BATHING.—Patrick Griffin, a laborer, while bathing at the foot of Fifty-first street, East River, on Thursday evening, got beyond his depth and was drowned. His body has not been recovered. Deceased leaves a wife and five children.

KILLED BY A FALL.—Arthur Lewis, a child 3 years of age, while alone in the upper room of the residence of his parents, No. 35½ Greenwich street, on Thursday evening, fell out of the window and was instantly killed. An inquest was yesterday held upon the body by Coroner Gamble, and a verdict of "Accidental death" rendered.

ACCIDENT FROM BLASTING.—John McClusky, a blaster, while engaged in ramming a charge in a rock in 57th street, yesterday morning, had his face nearly blown off by a premature explosion of the blast. He was conveyed to Bellevue Hospital. It is thought that both his eyes are entirely destroyed.

[Advertisement.]

THE DANGER OF FAST DRIVING.

NARROW ESCAPE OF LIFE.

Numerous accidents are constantly occurring in our city by vehicles being driven either carelessly or too rapidly, resulting often in serious consequences. An affair of this kind occurred in front of our office the other day. A buggy containing two gentlemen, while crossing Chatham st., was met by an omnibus driving toward the Bowery. Both vehicles appeared to be hastening their speed as they approximated at right angles, each thinking to clear the other in time before they met, but in this they miscalculated, for, as they both verged to a point, we fully expected to see a collision, but were surprised to see the buggy make a sudden sweep to the left, turning almost on a center, thus allowing the omnibus to sweep past without coming in contact. Such a sudden and unexpected move, done in such a short space of ground without upsetting, rather attracted the attention of persons who witnessed it. We afterward found from inquiry, that the buggy had one of LORD'S PATENT PERCH COUPLINGS on, the only thing that saved the vehicle and its occupants from being smashed. From personal inspection of this Coupling we were inclined to give it credit for its simplicity and apparent usefulness, but were not prepared to witness its safety and valuable aid in turning so short, when necessity demanded it. As this is a new Coupling just introduced in our city, it is to be hoped it may rapidly come into use, as it costs no more than the ordinary Coupling, and can be readily applied to carriages now in use for a small amount. A model buggy with this Coupling on can be seen at BOARDMAN, GRAY & CO.'s Piano Warerooms, No. 437 Broadway, where the agent may be found, who will be happy to give any information required.

[Advertisement.]

THE INIMITABLE WYMAN.—WYMAN, the wonderful, is going to astonish this afternoon and evening all the world with his budget of laughable and startling feats in necromancy and diablerie at Barnum's Museum. He has no equal living.

[Advertisement.]

EQUALITY AND LIBERTY OF MANKIND to poverty, cold water and sunshine generously granted by the money grabbers of the world to their slaves; photographed in colors of blood by HOLMES, No. 289 Broadway.

[Advertisement.]

ARTIFICIAL EYES.—The largest assortment in this country of Paris-made ARTIFICIAL HUMAN EYES at JOHN MILWAU'S, No. 183 Broadway.

[Advertisement.]

THE METALLIC TABLET STROP—Invented by GEO. SAUNDERS, A. D. 1816.—This, the genuine article, has never been equaled for producing the keenest possible edge to a razor. Can be obtained of the subscribers and sole manufacturers, J. & S. SAUNDERS, store No. 7 Astor House.

[Advertisement.]

TEAS.—The CANTON TEA COMPANY have on hand every variety of TEAS for Grocers and Tea Dealers and private families. Souchon, Oolong and Young Hyson from 35c. to 40c; Gunpowder and Imperial from 25c to 0c. All other qualities equally low. Also, 5-lb boxes good FAMILY TEA for $1. Call and examine at No. 125 Chatham-st., between Pearl and Roosevelt-st.

LAW INTELLIGENCE.

CASE OF CANCEMI.

SUPREME COURT—CHAMBERS—July 30.—Before Judge INGRAHAM.

APPLICATION FOR A WRIT OF ERROR AND STAY OF PROCEEDINGS.

The People agt. Michael Cancemi.

This morning Cancemi was brought again into Court, and appeared to be somewhat downcast. Mr. Blankman, of his counsel, submitted his motion for a writ of error with a stay of proceedings, to enable them to go before the Court of Appeals, which meets on the second Thursday in September. The prisoner was ordered to be executed on the 2d day of September, and therefore, unless the stay was granted, the writ of error would amount to nothing.

Mr. Ashmead argued in support of the motion for a stay of proceedings, contending that new and grave questions were involved.

District-Attorney McKeon opposed the motion, and cited authority to show that the right of trial by twelve jurors could be waived. He asked to amend the papers to be attached to the record, so that they would show more definitely the order of proceedings.

Mr. Ashmead said he would not object to the amendments proposed—which show that Judge Wright's amendment of the postea was made by order of the General Term—and the papers were ordered to be so amended.

Judge Ingraham reserved his decision, and Cancemi was taken back to the Tombs.

CHAMBERS—JULY 30.—Before Judge INGRAHAM.—DECISIONS.

Jas. Butler agt. Lewis Wickwire.—If the plaintiff will stipulate not to offer any proof of the agency of Lewis R., then the motion is denied. If such stipulation is not given within ten days, the motion is granted; costs to abide event.

Isaac Edwards agt. the Mayor, &c.—Allowance of $150 ordered.

John Campbell et al. agt. Horace S. Taylor.—Motion denied; defendant's costs to abide event.

Elias Burchell agt. James Strauss et al.—Motion denied; plaintiff's costs, $10, to abide event.

Emily B. Wines agt. Gilbert H. Wines.—Divorce granted.

Alfred C. Post agt. Sarah A. Birmingham et al.—Judgment of foreclosure, and sale ordered, on report of Mr. R. C. Beamish, the referee.

Joseph Lovell et al. agt. David Sterling, impleaded.—Motion denied; costs, $10, to abide event.

Before Judge SUTHERLAND.

Morris Linda agt. John Wolfe.—Motion to set aside attachment granted, with $10 costs.

The People ex rel. the President, &c., of the Tremont Bank and others agt. Richard B. Connolly, &c.—Motion for mandamus denied, with $10 costs.

Chas. Maples agt. Geo. C. Byxbie et al.—Motion to appoint receiver granted, with $10 costs to abide event, and reference ordered to Mr. P. T. Ruggles to appoint such receiver, upon his giving the usual security, with the ordinary powers and subject to the ordinary duties of a receiver.

SUPREME COURT—GENERAL TERM.—July 29.—Before Judges DAVIES, INGRAHAM and SUTHERLAND.

Ann Cropsey agt. Peter B. Sweeney, Public Administrator.

This action was brought to recover $40,000 for services rendered by plaintiff for James Ridgway in his lifetime, while plaintiff was standing in the supposed relation of wife. It appears that the marriage ceremony was solemnized between the plaintiff and James Ridgway in 1821, plaintiff believing that they were lawfully married. In September, in the same year, Catharine Ridgeway commenced an action for divorce against James Ridgway. He was married to her in 1812, and her name was then Catharine Dob; and in 1815 he separated from her. In June, 1822, a decree was entered dissolving the marriage. In 1825 the marriage ceremony was again solemnized between plaintiff and James Ridgway, she believing that he was competent to contract marriage. James Ridgway died in 1847. At the time of the first marriage he was worth about $1,000, and at the time of his death he had amassed $150,000. She claims that it was partially owing to her efforts that Mr. Ridgway was enabled to accumulate this fortune. There were twelve children by the marriage, eight of whom are now living. Prior to his marriage with Catharine Dob he had once been married, and had issue by both marriages. One child, Eliza Ann, and one grandchild, George W. Ridgway, surviving issue of his deceased son Joseph—the issue by the first marriage—and one grandchild, the sole surviving issue of a daughter by his second marrige, claim to be the only lawful heirs to James Ridgway.

The defendant demurred to the complaint, and after the argument at Special Term the demurrer was overruled. Defendant appealed to the General Term, and the order of Special Term was reversed, and judgment for defendant was given on the demurrer.

The case was argued at the last General Term, and the following is the opinion of the Court:

SUTHERLAND, J.—Unless the Code, by abolishing the distinction between actions at law and suits in equity, and the forms of such actions and suits and of pleadings theretofore existing, intended to initiate and has initiated new principles of law by which a class of rights and of wrongs, not before the proper subjects of judicial investigation and remedy, can now be judicially investigated and remedied, the facts stated in the plaintiff's complaint in this action do not constitute a cause of action, and the demurrer of the defendant to that complaint is well taken.

I am not aware that any one has ever claimed for the Code, or charged against the Code, a mission or purpose so bold, novel, sweeping and dangerous.

It cannot be supposed that the abolition in words of the distinction between actions at law and suits in equity by the Code was intended to break up the well settled fundamental principles of limits of common law and equitable jurisdiction, and open to courts, as proper subjects of judicial discretion, a class of moral wrongs or misfortunes not before the legitimate subjects of legal or equitable investigation or redress.

Nor can it be supposed that the abolition of the forms of actions was intended to create or justify novel and unprecedented *causes of action*.

Although the form of the action of assumpsit and of the pleadings therein has been abolished, yet the obligation of contracts and the distinction between an express and an implied assumpsit remain, and, notwithstanding the Code, in a large class of cases now as before the Code, it is only on the theory of an implied assumpsit "inferred from the conduct, situation or mutual relations of the parties," that justice can be enforced, and the performance of a legal duty compelled.

It is no longer necessary and perhaps not even proper in such case, for the plaintiff to allege in his complaint any promise on the part of the defendant; but he must state facts, which if true, according to well settled principles of law, would have authorized him to allege and the court to infer a promise on the part of the defendant before the Code.

The form of assumpsit is no longer necessary nor perhaps even proper in such a case; but facts sufficient to raise it and to put it on paper were it lawful to do so, are still necessary.

It follows from what has been said that the principal question raised by the demurrer in this case is, there being no express promise pretended or alleged in the complaint, whether the law implies a promise from the facts therein stated.

The action is for services rendered by the plaintiff for James Ridgway in his lifetime, while the plaintiff was standing in the supposed relation of wife.

It is alleged in the complaint that the marriage ceremony was solemnized in due form of law between the plaintiff and James Ridgway in 1821, she believing that they were lawfully married, and living and cohabiting with him as his wife; that on or about the 15th of September, 1821, proceedings were instuted in the Court of Chancery of this State against James Ridgway for divorce by Catharine Ridgway, to whom he had been married under the name of Catharine Dob, in the year 1812, and from whom he had separated in 1815; that on or about the 13th day of June, 1822, a decree was made dissolving the marriage between the said Catharine and James; that about the Summer of 1825, the marriage ceremony was again solemnized in due form of law between the said plaintiff and the said James Ridgway; that before and at the time of the ceremony of marriage in 1825, the plaintiff was informed and believed that the said James Ridgway was competent to contract marriage with the plaintiff, and that the plaintiff believed that the marriage was valid until after the death of James Ridgway; that from the time of the first marriage ceremony until James Ridgway's death in 1847, the plaintiff and the said James lived and cohabited together as husband and wife, and were known and reputed as such; that at the time of the first marriage ceremony, James Ridgway was a carpenter, and possessed of property not exceeding $1,000 in value; that the plaintiff, in addition to her ordinary household duties and the usual care and management of the domestic affairs of James Ridgway, labored to promote the success of his undertakings and to procure the means of defraying the household expenses, and in the conduct and management of the domestic affairs practiced the utmost economy; that the said James was successful in his business and accumulated a fortune, which at the time of his death amounted to $150,000; that during the entire period the plaintiff so lived and cohabited with James Ridgway, she had the entire management of his domestic affairs, and labored by industry, economy, care and attention to her duties to promote his interests and success; and that it was owing to her efforts that he was enabled to accumulate so much property; that during the same period she bore unto him twelve children, eight of whom are living; that prior to the marriage of James Ridgway with Catharine Dob, he had once been married, and had issue by both marriages; that one child, Eliza Ann, wife of Jeremiah Rowland, and one grandchild, George W. Ridgway, surviving issue of his deceased son Joseph, the issue of his first marriage; and one grandchild, the sole surviving issue of a daughter by his second marriage, claim to be the only lawful heirs of James Ridgway, and entitled to his estate.

The plaintiff claims that the services rendered by her to James Ridgway in and about the management of his household affairs and otherwise as in the complaint set forth, were rendered at his request and were reasonably worth $40,000, and demands judgment for that sum with interest from November 21, 1847.

It is not alleged in the complaint that James Ridgway, in his life-time, ever knew, or supposed, after the 2d marriage ceremony, that the plaintiff was not his lawful wife; nor is it alleged that when his first supposed marriage with the plaintiff took place, that he knew that his wife Catharine was living, and he unable to contract a legal marriage with the plaintiff.

No doubt, from the time of the first marriage ceremony to the institution of the suit for divorce, and from the time of his second marriage ceremony until his death, James Ridgway and the plaintiff both supposed they were lawfully married, and that he lived and died supposing the plaintiff was his lawful wife.

Now after his death, upon the assumption that his supposed marriage was not legal, will the law permit us or authorize us to turn this supposed relation of husband and wife into the relation of master and servant, and thus infer or imply a promise on the part of James Ridgway in his life to *pay*, and an expectation on the part of the plaintiff to *receive pay* for the services rendered by the plaintiff while so standing in the supposed relation of husband and wife.

The very ground upon which the plaintiff's case appeals so strongly to the sympathies of the Court, forbids any such fiction, inference or implication.

Her own story (no doubt truthful) of her long-devoted, faithful love and services as a *wife* and *mother*, will not permit us to say that she is legally entitled to receive pay for those services as *as a servant*.

True, the law will not presume that work or labor performed as a servant or laborer were voluntary, and performed without any view to compensation, but the law cannot presume that the domestic and household work and services of a wife for a husband are performed with the view to pay as a servant or laborer. The law would do injustice to the plaintiff herself by implying a promise to her to pay for these services; and respect for the plaintiff herself, as well as for the law, compels us to infer and hold that these services were performed not as a servant with a view to pay, but from higher and holier motives, and thus therefore her complaint does not constitute any cause of tion.

The order of the Special Term overruling the demurrer must be reversed, and the defendant must have judgment on the demurrer.

IN CHAMBERS—July 29.—Before Judge INGRAHAM.—DECISIONS.

Harriett Griffin agt. David Griffin.—Divorce ordered and referred to referee to inquire what would be suitable alimony for the plaintiff.

Strauss agt. Baker.—Motion denied; plaintiff's costs $10, to abide event.

Warren A. Ransom agt. Elijah M. Cunningham et al.—The order made by Judge Sutherland continued; no costs allowed on this motion.

John Wilkes agt. David M. Hughes et al.—Ordered that the judgment entered stand as security, without prejudice to the right of defendant to move to set aside the report of referee and judgment for irregularity, or for any other cause; and on filing a bond to secure the payment of such judgment, all proceedings thereon to be stayed for thirty days, to enable defendant to make such motion.

Before Judge SUTHERLAND.

Gilbert. F. Everson agt. R. E. Everson et al.—Order granted for the substitution of Barker as receiver of the separate property of Acams.

Chas. E. Whitehead agt. Alex. McCotter.—Referred to Mr. Hiram P. Hunt.

Paoli Lathrop agt. James Reed et al.—Motion granted without costs to either party.

In the matter of the application of the Mayor, &c., relative to the Central Park.—Order granted for payment of awards to unknown owners.

SUPREME COURT—July 30.

THE ENGLISH EMBEZZLEMENT CASE.

Jonathan Peel, her Britannic Majesty's Principal Secretary of State, agt. James Sutton Elliott.

In this case the plaintiff's attorney has received notice that the defendant intends to appeal to the General Term of the Supreme Court from the decision of Judge Ingraham, denying the motion to vacate the order for his arrest. The regular General Term will not sit until the third Monday in September.

STEAM BELOW FORTY-SECOND STREET—MOTION FOR AN INJUNCTION DENIED.

COURT OF COMMON PLEAS—JULY 30.—Before Judge HILTON.

The New-York and Harlem Railroad Company agt. The Mayor, &c., of New York, and the Board of Metropolitan Police Commissioners.

This was an application for an injunction to enjoin and restrain the defendants from executing the ordinance of the Common Council, prohibiting the use of steam on Fourth avenue, below Forty second street.

This morning, Judge Hilton delivered the following elaborate opinion, denying the motion:

HILTON, J.—The plaintiffs are a Railroad Company, incorporated by an act of the Legislature, passed April 25, 1831 (Laws 1831, p. 323), with power to construct a railroad or way from Twenty-third street to the Harlem River, and "to transport, take and carry property and persons upon the same, by the power and force of steam, of animals, or of any mechanical or other power, or of any combination of them which the said Company may choose to employ." The act contains eighteen sections, most of which are directed to the manner in which the capital stock shall be subscribed, and the right of way acquired upon the route to be located by the Company, subject to the approval of the Common Council of the City of New-York.

After provision is fully made upon these subjects, section 16 further provides that "nothing in this act shall be deemed to authorize the said Corporation to construct or use their railroad or way across or along any of the streets or avenues as designated on the map of the City of New York, whether such streets or avenues shall have been opened or not, without the consent of the Mayor, Aldermen and Commonalty of said city, who are hereby authorized to grant permission to the said Corporation to construct their said railroad or way across or along said streets or avenues, or prohibit them from constructing the same; and after the same shall be constructed, to regulate the time and manner of using the same, and the speed with which carriages shall be permitted to move on the same, or any part thereof," &c. On Dec. 22, 1831, the Mayor, Aldermen and Commonalty of the City of New-York, upon the application of the plaintiffs, adopted an ordinance permitting a railway or track to be laid down pursuant to this act, and in conformity with a map on file in the Register's office.

Section 2 of this ordinance is to the effect that if at any time after the construction of the railway it should appear to the Mayor, &c. of the City of New-York that the railways, or any part thereof, should constitute an obstruction or impediment to the future regulation of the city or the ordinary uses of any street or avenue (of which the Mayor, &c., should be the sole judges) the plaintiffs or the directors thereof shall, on the requisition of the said Mayor, &c., forthwith provide a remedy for the same satisfactory to the Mayor, &c.; or if they fail to find such remedy, they shall within one month after such requisition proceed to remove such railway or other obstruction or impediment, and to replace the street or avenue in as good a condition as it was before the said railway was laid down, &c.

By section 3 the right of regulating the description of power to be used in propelling carriages on and along the railways, and the speed of the same as well as the power reserved to the said Mayor, &c., by the Act of Incorporation of the plaintiffs, was expressly retained and reserved.

By Section 8 it was declared that this ordinance should not be considered as binding on the Common Council, nor should it go into effect until the plaintiffs first duly executed, under their corporate seal, such an instrument in writing, promising, covenanting and engaging, on their part and behalf, to stand to, abide by and perform all the conditions and requirements of this ordinance, as the Mayor and the counsel to the Board should approve, and when so signed and approved to be filed with the Controller. On Jan. 9, 1832, the plaintiffs accordingly executed under their corporate seal, and filed with the Controller, an agreement reciting such ordinance, and in consideration thereof, and pursuant to its requirements, covenanted, engaged and promised on their part to stand to, abide by and perform all the conditions and rescindments contained in it. Having thus obtained the consent of the corporation of the city, the plaintiffs proceeded to and did acquire under their act of incorporation the title to a strip of land twenty-four feet in width, in the Fourth avenue, extending from Twenty-third street to the Harlem River, and upon which their track is now laid.

Subsequently, and in 1848, the avenue was opened as a public street, in the manner prescribed by law, and by which it appears that the plaintiffs' title thus acquired was extinguished. In December, 1844, and while the engine house and steam depot of the plaintiffs was located on the avenue at Twentieth street, the Mayor, &c., adopted a resolution or ordinance requiring the discontinuance of steam power below Thirty-second street prior to August 1, 1845.

This direction was not complied with until the Fall of 1846, when the plaintiffs removed their engine-house, machine shop, &c., to Thirty-second street, upon the alleged suggestion and assurance of the Corporation of the City that the erection at Thirty-second street would be permanent, and not subject to further interference.

That under these suggestions and assurances the plaintiffs have constructed improvements at the location named, at an expenditure of upward of $94,000; that on August 9, 1850, the Mayor, &c., adopted a resolution requiring the plaintiffs to construct an arch over that part of their road which was laid in the trench cut through the avenue at Murray Hill, and extending from Thirty-second to Forty-second street; that the plaintiffs were induced as they allege to acquiesce in this measure, and to make the expenditure requisite to construct the arch, under assurances made before the Committee of the Common Council that such improvement would obviate all objections to the permanent erection of the depot at Thirty-second street.

After the arch had been completed, as the plaintiffs allege, in accordance with the resolution, and on December 27, 1854, the Mayor, &c., adopted a resolution or ordinance in the following words:

Resolved, That no locomotive or steam engine be allowed to run on the tracks of the Harlem or New-Haven Railroad Company on Fourth avenue south of Forty-second street, eighteen months after the passage of this ordinance.

The plaintiffs having neglected to conform to this requirement, the Board of Commissioners of the Metropolitan Police Department made an order directing their Superintendent to enforce it. The plaintiffs rest their refusal to obey it on the ground that the ordinance was passed in violation of their rights and franchises, as granted by acts of the Legislature; that it is without any legal or equitable authority to authorize its passage, and that it is in violation of the aforesaid agreement. Upon a complaint embodying substantially the facts above stated, and alleging that the enforcement of this ordinance would be ruinous to the business of the plaintiffs, this Court is asked to restrain the defendants from interfering with the running of the steam engines of the plaintiffs, of the New-York and New Haven Railroad Company, upon the Fourth avenue to Thirty-second street.

In opposition to this application the defendants have furnished affidavits showing that Murray Hill and the land adjacent to the plaintiffs' engine depot at Thirty-second street, has become a thickly settled part of the city, and is used as a place of residence by citizens who have erected there valuable and expensive buildings; that the plaintiffs have placed their rails upon the sidewalk and carriage-way of the avenue at Thirty-second street, and use them with their cars and engines in such a manner as to render that part of the avenue highly dangerous to travelers on foot or in their own vehicles and that the smoke, gas and noise resulting from the running of locomotive engines on the avenue below Forty-second street, creates a nuisance noxious and offensive to the neighboring inhabitants, and materially interferes with the proper enjoyment by them of their property.

Upon the argument the counsel for Police Commissioners presented two preliminary objections, which seem entitled to attention:

First: That this Court has no jurisdiction of an action of this nature against the Corporation of the City.

The jurisdiction of this Court is partially defined by Section 33 of the Code of Procedure, and it extends to actions which relate to the determination of any form of a right or interest in and for [illegible] to real property; to actions of partition and foreclosure; to certain actions for the recovery of a penalty or forfeiture imposed by statute, and to actions against public officers in certain cases; also to all other actions where the defendants reside, or are personally served with summons, in the city; or when one or more of several defendants, jointly liable on contract, reside or are personally served with summons within the city, and also to actions against corporations created by or under the laws of this State, and transacting their general business or having an office for the transaction of business within the city, or established by law therein; or created by the laws of any other Government, [illegible] the recovery of any debt or damages, whether liquidated or not, arising upon contract made, executed or delivered within this State, or upon any cause of action arising therein (Code, section 33, 123, 124; Laws 1847, p. 279, sec 7; Laws 1854 p. [illegible]). The Constitution (art. 6, sec. 3) also provides that "all corporations shall have the right to sue and be subject to be sued in all Courts, in like cases as natural persons."

These provisions of law would seem decisive upon the question, and the decision of the Court of Appeals, in the People ex rel. Davis & Palmer agt. Sturtevant (5 Seldon, 263) so fully sustains the jurisdiction that the point here taken can scarcely be considered open for discussion. And it is proper to add that the Counsel for the Corporation not only declined to present it, but expressly disclaimed it.

Second: It is objected that this Court has no jurisdiction to restrain the Police Commissioners; that they are State officers and compose a board of State officers, and against such, an injunction can only be granted by the Supreme Court at General Term.

In support of this view I am referred to ch. 488, Laws of 1857, p. 920. But upon reference to sec. 2 of that act, it will be seen that the words "State officers," in the sense there used, were only intended to include such as had been theretofore so denominated, and to designate those who were immediately connected with the government of the State, and in actions against whom it was the duty of the Attorney General to appear and defend. (Const. 1846, Art. 5; see marginal note to sec. 1; Christman agt. Floyd, 9 Wend. 342.)

The Police Commissioners are mere local district officers, and are not "State officers" within the proper meaning of that term as used in the act of 1851. Consequently, in a proper case they may be restrained by this Court in the exercise of its equity powers, in the same manner and to the same extent as other local or county officers.

These objections having been disposed of, I now come to the examination of the principal question: whether the ordinance intended to be enforced was passed in violation of previous agreements between the Corporation of the City and the plaintiffs, of rights and franchises granted to the plaintiffs by the Legislature, or without any legal authority. The legislative power and control of the Corporation of the City over the streets and avenues within its limits are very extensive, and the only limitation upon which is that these shall be appropriated to no use or purpose which is not alike free and common to all citizens and travelers. Everything which tends to render the streets useful or convenient for the purposes of traveling upon them as common public highways is within the power of and may be exercised by the Corporation; but as to converting them to railroad purposes, and permitting the rail tracks to be laid upon them, to be used by an individual or an association in the transportation of merchandise and passengers for hire, is a devotion of them to a use exclusive in its nature, and which, from its very character, cannot be alike common to all travelers. Hence the Legislature in the act incorporating the plaintiffs gave to the Corporation of the city express authority to grant permission to the plaintiffs to construct their road across or upon the streets over which their route might be laid. (Attorney General agt. Mayor, &c., by Court of Appeals Dec. 1856; Milhau agt. Sharp, 17 Barbour, 437; Williams agt. Central R. R., 16 N. Y. Rep. 97; Attorney-General agt. Mayor N. Y., Superior Court, General Term, opinion of Bosworth, J.)

Although the power to give this permission must be derived from the Legislature, yet its exercise does not in any way deprive the Corporation of its legislative control over the streets in all other respects; and it is entirely competent for them to impose upon the parties asking permission such restrictions as the Corporation may think proper in respect to the manner in which the rail track shall be used, and also conditions upon which the right to continue in the future use of the same may depend. But apart from the restrictions imposed by the sixteenth section of the act incorporating the plaintiffs, and expressly reserved to the Corporation by the contract entered into by the plaintiffs, December 22, 1831, upon obtaining permission to lay their track the Corporation might at any time regulate the manner of use and the motive power to be used upon such track, whenever in its opinion the public interest requires such interference.

This regulating a legislative power of the Corporation over the streets partakes of the character of legislative sovereignty. Originally conferred by the Charter of Gov. Dongan in 1686, confirmed in 1730 by the Montgomerie Charter, and subsequently by legislative grants, it may well be doubted whether the city can be deprived of it even by an act of the Legislature itself. Certain it is, however, that the Corporation cannot surrender any part of it into the hands of private individuals, or of a private corporation, without previous legislative sanction, and any attempt on its part to do so without such authority would be utterly void. (See cases cited, supra.) In this case, not only did the Legislature abstain from authorizing the Corporation to grant the plaintiffs any permission except to construct their railroad across or along certain streets and avenues of the city, but in addition required this regulating and legislative power of the Corporation over its streets by providing that after the [illegible] permission, the time and manner of using the same and the speed with which carriages should be permitted to move on the same or any part thereof, should be subject to it. The plaintiffs accepted their charter with this restriction, upon obtaining permission to lay their rails recognized it as such, and by their agreement of January 9th, 1832, bound themselves to conform to it and all the other conditions required of them by the ordinance of December 22, 1831.

But it is contended that this agreement is not binding upon the plaintiffs, because it attempted to transfer to the Corporation the discretion vested in the plaintiffs by their act of incorporation, and by which it is said that they alone possessed the right to determine the motive power to be used on their road. The answer to that is two fold:

First: A party applying to a Court for the application of its equitable powers should be held to the rule "that he who seeks equity, must do equity." He should not be permitted to found his claim for relief upon a permission contained in a contract, while he repudiates the conditions and covenants entered into by him, and which framed the consideration upon which the permission was granted. (Linden agt. Hepburn, 3 Sand. Superior Court rep. 371; Willard's eq. Jurisprudence 46.)

Second: The agreement, for the reason, I have stated, was not a transfer of the corporate powers of the plaintiffs; the corporators might grant or withhold the permission and if granted, it had the right to impose upon it such restrictions as would enable the Mayor, &c., to regulate the use of the plaintiffs' road as to prevent its being a nuisance to citizens and travelers; besides, as before stated, the plaintiffs accepted their charter with this restriction upon their corporate power, and cannot now be permitted to complain that it turns out to be more burdensome or inconvenient than was first anticipated. Again, it is contended that even admitting that the Corporation originally had the power under the act incorporating the plaintiffs, the ordinance contained in the agreement of Jan. 9, 1832, yet, by subsequent assurances to the agreement with the plaintiffs, and upon the faith of which the plaintiffs had incurred large expenditures, and submitted to great inconveniences, it has deprived itself of the right to interfere in any way with the plaintiffs in their present use of their road. The answer to this is likewise two fold: first, there can now exist no doubt that corporations, like individuals, may be bound by implied contracts to be deduced by inference from corporate acts without either a note, writing or deed. (Ex parte Penn. Iron Co., 7 Cowan, 540; American Ins. Co. agt. Oakley, 9 Paige, 496; Peterson agt. The Mayor, Court of Appeals Mss., June Term, 1858.) But in applying this rule, we must be careful not to violate other legal principles, such as that no act can be made valid which is without the power of the Corporation or the scope of its authority. Here, as we have seen, the Corporation could not deprive itself of its legislative power over the streets, and prevent it hereafter regulating their use by everybody, including the plaintiff, and any attempt to do so by contract, either express or implied, would be not only revocable at pleasure, but void. Second, the papers read on this motion fail to convince me that the Corporation ever entered into any such agreement or that their acts were such as would lead me to infer any contract of the nature alleged. It is quite probable the plaintiffs supposed when they arched over the trench from Thirty-third to Forty-first streets that they had put an end to all future interference with them in the use of their steam engines above Thirty-second street, and even though this act was based upon such supposition, the Court cannot give any relief founded upon it, though it may have been entertained and acted upon in good faith. Having for the reasons stated arrived at the conclusion that the ordinance which the plaintiffs ask to have the enforcement restrained is valid, and one that the plaintiffs are bound to obey, it does not seem necessary to inquire into the reasons which actuated the Mayor, &c., in adopting it, because Courts are bound to assume that where a discretion is vested in a municipal body exercising functions of a legislative character, that good reasons existed for the adoption of a regulation or ordinance which was the result of such a discretion. (Oneida Common Pleas agt. People, 19 Wend. 79, 99.)

The affidavits presented by the defendants go far to show that the use of steam engines at the plaintiffs' depot at Thirty-second street constitutes a nuisance to the neighborhood, for the constant running of engines across the sidewalks and the condition of the avenue at this point, produced by the plaintiffs' acts, constitute an obstruction to its free use by our citizens to such an extent as to call for the adoption of the ordinance and its enforcement by the Police Commissioners. These may be the reasons which have controlled the defendants in their conduct, but whether they are or are not, it is not my duty to consider, having determined the ordinance question to be valid, and one that the defendants may properly enforce. Although upon the argument it was deemed by counsel on both sides necessary to inquire into the powers and duties of the Board of Police Commissioners and the powers of a policeman or constable, both at common law and under the broad provisions of the Metropolitan Police act (2 Laws of 1857, p. 200.) It seems unnecessary that I should follow them, after having arrived at the conclusion stated. It is enough to say that the duty of enforcing all the public ordinances of this city, and especially those which are applicable to police or health (secs. 5, 29), is imposed by law upon the Board of Police Commissioners, and to add that upon the affidavits read on this motion the ordinance in question might very properly be classed under either head. I have abstained from inquiring, whether under the law amendatory of the act incorporating the plaintiffs, passed March 28, 1848, (see law of 1848, Ch. 143, p. 258), the N. Y. and N. H. Company acquired any greater rights in respect to the use of the plaintiffs' track than is possessed by the plaintiffs, because that Company is not before the Court as a party to this suit. But if the views I have here stated are correct, it is difficult to perceive wherein their position, under the ordinance in question, differs materially from that of the plaintiffs. The motion for injunction is denied.

Charles O'Conor and Charles W. Sanford for plaintiffs; Greene C. Bronson and David Dudley Field for the Police Commissioners; Richard Busteed and Gilbert Dean for the Corporation.

SPECIAL TERM—July 30.—Before Judge HILTON.

CASE OF BILLY MULLIGAN.

The People of the State of New York agt. John Petrie and William Mulligan.

To-day Judge Hilton delivered the following opinion in this case:

HILTON, J.—The defendant, Mulligan, was indicted by the Grand Jury of this county for an assault and battery on Hiram A. Webb. He appeared before the Recorder, and, with the defendant Petrie, as surety, entered into a recognizance in the sum of $1,000, conditioned that Mulligan should personally appear and answer to the indictment, and abide the order of the Court of General Sessions of the Peace, and not depart therefrom without leave.

The trial was ordered to take place on the 9th of July instant, when he appeared with his counsel, and presented to the Court affidavits to the effect that material witnesses for his defence were absent, and that without them he could not safely proceed to trial.

The Recorder, however, directed the case to proceed, and a Jury was impaneled, but before the trial actually commenced, Mulligan left the Court without leave, and, upon his being called, failed to appear or answer, and the recognizance was thereupon declared forfeited.

Judgment having been entered upon this forfeiture and docketed with the County Clerk, it became subject to the jurisdiction and control of this Court in the same manner as other judgments, and as if it had been docketted in the Court. Laws of 1845, ch. 229, p. 256.

In addition, the power is conferred upon this Court (Laws of 1813, ch. —, p. 307, sec. —; Laws of 1854, ch. 198, p. 464, sec. 6.) to remit all or any part of such forfeiture, or to discharge such recognizance upon such terms as shall appear just and reasonable.

The defendants now apply to have this judgment vacated, and the forfeiture remitted, upon the following grounds:

First: That, upon the affidavits presented, the Court of Sessions should have postponed the trial, and ought not to have ordered it to proceed in the absence of material witnesses for the defense.

Second: That Mulligan's attorney having appeared for him, it was not necessary, nor was he bound to be present in person, and, for this reason, the Court erred in directing the recognizance to be forfeited.

Third: That the surety, by producing the defendant Mulligan in Court at the time the trial was ordered to proceed, became discharged from all liability upon the recognizance.

Under the wide jurisdiction and discretion conferred upon us in respect to judgments of this nature, there cannot be much doubt that we may look into the proceedings and the affidavits read upon the motion on the part of the defendant to postpone the trial, to ascertain whether the facts shown were such as fairly entitled him to such postponement, but there is a manifest impropriety in our doing so before the defendant has appeared and submitted himself to trial and judgment upon the indictment.

At present, I decline to do so in this case.

The counsel is mistaken in supposing that upon the trial of an indictment for a misdemeanor the defendant has the option to attend or not as he may choose.

It is true that, at common law, the trial might proceed in his absence, provided he had once appeared (4 Black. Com., 384), but our statutes (2 R. S., 734, s. 13) provide that no person indicted for any offense can be tried unless he be present either personally or by his attorney, duly authorized for that purpose. And in the case of the People vs. Wilkes (5 Howard P. R., 104) it was held that the general authority of an attorney or counsel in the [illegible] was not sufficient. There must be a distinct and express authority given for this purpose, and an unequivocal waiver of the [illegible] right to be present, before the trial can proceed.

But, apart from this, in criminal cases it is at all times discretionary with the Court whether it will proceed or not in the [illegible] absence of the defendant; and if he is called at any stage of the trial, and fails to appear and answer, his recognizance may be forfeited. (2 Benn. [illegible] Grim. Cases, 454.)

In respect to the [illegible] it is sufficient to say that the recognizance was upon condition that Mulligan should personally appear to answer the indictment, and abide the order of the Court, and not depart therefrom without leave, thus providing against the very contingency [illegible] happened in this case.

Finally, as a general rule, [illegible] of this nature should not receive any favor at the hands of [illegible] unless it is made to appear that the surety or bail has in [illegible] consented to the escape, and in addition [illegible] reasonable effort has been made to apprehend the principal [illegible] render him up for trial.

This, it seems, is in the power of the defendant [illegible] time to do, as the affidavits read by the District [illegible] that Mulligan is now living at Hoboken in New-Jersey, any moment to be seized by his bail and brought to this city.

For these reasons the motion is denied.

SUPERIOR COURT—SPECIAL TERM—July 30.—Before Judge BOSWORTH.

Hamilton Fish agt. Joel S. Oatman.

If this action is one of those named in the Code, it was the duty of the Clerk to make an allowance to the plaintiff. Whether one should or should not be made by the Clerk is not a matter resting in his discretion. The plaintiff is entitled to it absolutely, or has no right whatever to it, as the action is or is not one of those named in section 308.

One view is that this may properly be called an action "for an adjudication upon an instrument in writing." Whether the plaintiff is entitled to have the lease canceled by reason of the refusal of the defendant to appoint a disinterested appraiser, or must give a renewed lease; and if the latter, whether the amount of rent to be paid is to be determined by the Court, or by referees or appraisers to be appointed by the Court, are questions which may arise upon such an instrument.

But this view is open to the objection that the words "for an adjudication upon" are of equivalent import to the words "for the construction of," and that when the Court is not asked to construe the meaning of the instrument and determine upon opposing constructions, the action is not "for an adjudication upon it" any more than one upon a note, bond or special contract, to recover damages for its breach. This latter construction of section 308 Mr. Justice Hoffman has decided to be the correct one. (Code, edition of 1857, p. 444, note c.) Under such circumstances, I should not decide to the contrary unless entirely clear that the decision is erroneous. It may be said of his decision that section 308, prior to its amendment in 1857, used the words "for the *construction* of." The language now is "for an *adjudication* upon." There must have been some design in making this amendment. Nothing has been effected by it if section 308, as amended is to be held to mean in this respect precisely what it did before the amendment. I observe, however, that Judge Woodruff intimates that the action is not one of those named in section 308 unless it is "a proceeding to compel the determination of claims to real property." I do not think it such a proceeding within the meaning of that section. Concurring in the intimation of Judge Woodruff, and not deeming it by any means clear that Judge Hoffman's decision is incorrect, I deem it more appropriate to conform to the deliberate decision of the latter until it has been reviewed by the General Term.

The allowance of $60 made by the Clerk must be stricken out.

COURT OF COMMON PLEAS.—CHAMBERS—July 30.—Before Judge HILTON.

Magdalena Veldhamner agt. Frederick Remond.

In this case, on the 12th of July inst, his Honor Judge Daly granted an order of arrest, holding the defendant to bail in the sum of $1,000, on an affidavit of the plaintiff, setting forth that Magdalena was youthful and inexperienced in the ways of this wicked world; that Frederick, taking advantage of her unsophisticated simplicity did, with his smooth tongue and honeyed language, and by means of a solemn promise of marriage, seduce her from the bright path of virtue, and that she is now ready to add to the population of the city in consequence of such seduction. On this affidavit, Frederick was made acquainted with the interior of Eldridge-street Jail. This morning the defendant's counsel moved for his discharge, on the ground that he never promised to marry the fair damsel, and that he was already a married man and blessed with a family of four children. Mr. McCoy, counsel for the plaintiff, contended that, so far as the fact of the defendant being married serving as an extenuation of the offense, the defendant had, beside damages for seduction, rendered himself liable to a criminal prosecution for obtaining goods under false pretenses, he having, as the counter affidavit of plaintiff showed, represented himself as a single man. Motion to discharge denied, as also to reduce the amount of bail.

UNITED STATES COMMISSIONER'S OFFICE—JULY 29.—Before Commissioner BRIDGHAM.

THE ALLEGED EMBEZZLEMENT OF RAILROAD COUPONS.

The United States agt. Louis Stern.

To-day the Commissioner gave his decision in this case. He held that the evidence sustained the charge against Stern for embezzeling the letter, and that he must be committed to await the action of the Grand Jury.

The examination of Jacob and Adolph Hew who are charged with complicity with Stern in negotiating the coupons, at the same time knowing them to have been embezzeled, will proceed before Commissioner Morrell.

In the case of the crew of the ship Cordelia, charged with revolt, on an examination held this morning, the proof against them being conclusive, the Commissioner committed all the accused, to await the action of the Grand Jury.

MARINE COURT—GENERAL TERM—July 29.—Before Judges MCCARTHY, MAYNARD, and THOMPSON.

DECISIONS.

Andrew Smith agt. Sumner Ely; Andrew Smith, sr., and James Graham agt. D. B. Britton; Samuel F. Jones agt. Ethan A. Allen; Michael Larkin agt. Roger Monaghan; William Robinson agt. John Nistle and others; Robert Murtagh agt. John Moore; John Laden agt. Calvin O. Billings; Henry Beaumont agt. James W. Shaw.—Judgment affirmed with costs. William Simon agt. John A. Davis.—Judgment reversed; new trial ordered; costs to abide the event.

COURT OF SPECIAL SESSIONS.—July 29.—Before Justices CONNOLLY, STEERS and KELLY.

Cases on the calendar, 72. Convictions, 34.

Lawrence Salantier and Daniel McAuliffe were convicted of stealing a quantity of iron. House of Refuge.

John Calahan was convicted of keeping a disorderly house at No. 145 Worth street. Penitentiary two months, and fined $50.

Margaret Kelly was convicted of stealing a keg of white lead. Penitentiary six months.

David Welsh was convicted of stealing a package of sewing silk. Penitentiary four months.

Nancy Marks was convicted of stealing four bars of brown soap. Penitentiary two months.

Mary Carman was convicted of stealing a counterpane and other articles. Penitentiary six months.

Francis King was convicted of stealing a hat and other articles. Penitentiary one month.

John Powers was convicted of stealing a scraper. Penitentiary two months.

Durand Victor was convicted of picking a lady's pocket of $1. Penitentiary six months.

David Thompson was convicted of stealing a pail of butter. Penitentiary four months.

Christopher Patterson was convicted of stealing a pair of pantaloons. Penitentiary one month.

Joseph Coleman was convicted of stealing a silver watch. Penitentiary four months.

William Mullin was convicted of an attempt to steal clothing on board a vessel. Penitentiary three months.

Frank P. Dobson and Charles E. Dobson were convicted of an assault and battery on Michael Reynolds. Fined $20 each.

Charles Burke was convicted of an assault and battery on Johanna Burke. City Prison 30 days.

Edward Kellner was convicted of an assault and battery on Louisa Kellner. Penitentiary three months.

Esau Trotter was convicted of an assault an battery on Phœbe Trotter. Penitentiary three months.

John Allison was convicted on two charges of assault and battery on Ann Hollahan and Bridget Smith. Penitentiary six months.

Thomas McCabe was convicted of an assault and battery on Mary Fox. Penitentiary three months.

Mathew Fibbs was convicted of an assault and battery on Timothy Golden. Penitentiary one month.

Ann Phillips pleaded guilty to an assault and battery on Thomas H. Bullmer. Penitentiary four months.

Mary Narr pleaded guilty to an assault and battery on Brevall Narr. Judgment suspended.

Julia Franklin pleaded guilty to stealing silver spoons and forks. Penitentiary three months.

Francis Flood pleaded guilty to stealing a lot of ribbons. Penitentiary one month.

James Clark pleaded guilty to stealing silver coins. House of Refuge.

Mary Hagan pleaded guilty to stealing laces and ribbons. City Prison 30 days.

Henry Gehen was convicted of an assault and battery on Louisa Wysgabes. Fined $20.

Wm. Carlock and Ellen Carlock were convicted of an assault and battery on Jane McLaughlin. Penitentiary two months each.

Ellen Johnson was convicted of an assault and battery on J. F. Badeshop. Fined $5.

Wm. Lang pleaded guilty to an assault and battery on Helen G. Shaw. Fined $20.

BROOKLYN ITEMS.

COMMENCEMENT EXERCISES AT THE FLUSHING FEMALE COLLEGE.—The Annual Commencement Sermon before this college was preached by the Rev. Wm. H. Milburn (the blind minister), in the Methodist Episcopal Church, Flushing, on Tuesday evening last. On Wednesday evening the young ladies of the college, assisted by a few of the principal members of the Mendelsohn Union of this city, gave a fine musical entertainment in the College Chapel, consisting of selections from Muller, Dressler, Meyerbeer, Mozart, Rossini, Donizetti, Haydn, and other eminent composers. On Thursday the finale of the Commencement