New-York Daily Tribune

# LAW INTELLIGENCE.

## THE INDICTED CITY GOVERNMENT OF 1857.

COURT OF OYER AND TERMINER—Nov. 23.—Before Judge Mullen.

The People of the State of New-York agt. Fernando Wood and sixty-one others.

Last week we published the remarks of Judge Mullen on the motion to quash the indictment in this case. He has since prepared an elaborate opinion, which is subjoined:

Mullen, J.—The importance of the questions presented on the motion to quash the indictment in this case demands a more careful examination than my engagements will permit me to make. I have been compelled, therefore, to confine my examination to two or three of the questions raised, and those such as affect the substance rather than the form of the indictment.

I entertain no doubt as to the soundness of the following positions:

*First:* That the Mayor and Common Councilmen of this City are officers of the City Government within the true intent and meaning of the 40th section of the amendment of the charter of said city passed in 1857.

*Second:* That, as such officers, they are liable to indictment for willfully doing, or permitting to be done, the acts specified in the said 40th section, which are therein declared to be misdemeanors.

*Third:* That the last clause of section 8 of the amendment to the charter, passed in 1857, does not exempt the Mayor or members of the Common Council from liability for the acts forbidden by section 40 of that act; but the approval of the Mayor, or the vote of the Councilmen, does not of itself make him or them liable. The offenses created by that section do not consist in approving or voting, but in accomplishing the result prohibited.

*Fourth:* That giving a lease for a longer period than ten years, without having complied with the provisions of the 41st section of the act of 1857, is a violation of the charter, within the meaning of the 40th section, and punishable as a misdemeanor; and,

*Fifth:* That a conspiracy by the said officers named in the indictment to give a lease in violation of the provisions of the Charter, is a misdemeanor and indictable as such.

I will now examine, as briefly as I am able, the several counts of the indictment, in order to ascertain whether they or either of them describe an offense under the statute referred to or at common law. I will first examine the second count. It avers in substance that the Mayor, Alderman and Commonalty is a Municipal Corporation, and as such capable of taking and holding real estate, and of granting leases of and selling the same. That, by the act of 1857, it was declared that no lease of the public property thereafter to be given (except as the same might be required by covenants of the Corporation already existing) should be for a longer period than ten years, and that all leases of public property should be made by public auction and to the highest bidder, who should give adequate security: and that it was further provided in said act of 1857, that any officer of the City Government who should willfully violate or evade any of the provisions of the said Charter shall be deemed guilty of a misdemeanor. That on the 21st of October, 1857, Wood was Mayor, and the other defendants Aldermen and Councilmen of said city and officers of the City Government; and that they, disregarding their duty, and with intent to violate and evade the provisions of said Charter, willfully and unlawfully did violate and evade the said Charter, by voting for and in passing a resolution in due form of law directing the Controller to lease to the Roman Catholic Orphan Asylum certain real estate belonging to the Corporation for a period longer than ten years—to wit, for so long a time as the same should be occupied for the use of the said Asylum, without causing any such lease of the said property to be put up at public auction, to be let or leased to the highest bidder. It will be seen by this abstract of the indictment, that it is not averred that any lease has ever been in fact executed or delivered by the Controller, nor that the Asylum has acquired any right, title or interest in or to the said lands. If it shall appear that these averments are, or either of them is, a necessary ingredient in the offense charged in the second count, it follows that the omission vitiates the count.

The 41st section already referred to, declares that no lease thereafter given shall be for a longer period than 10 years; and, also, that all leases shall be made by public auction, and to the highest bidder, who will give adequate security. It is the violation of these provisions, with others, that is declared to be a misdemeanor. It is then a misdemeanor to make a lease for a longer term than 10 years; and it is also a like offense to make any lease, whether for less or more than 10 years, except by public auction, and to the highest bidder, &c.

If the second count alleged the making of a lease for longer term than 10 years, and also that it was made without being put up at public auction, &c., it would contain the description of two distinct and independent violations of the 41st section of the charter, and, consequently, two misdemeanors; a count thus framed would be fatally defective. But it will be seen that it is not alleged in this count that any lease has been made; the averment is, that the *defendants did violate and evade the provisions of said act by voting for, and passing a resolution in due form, directing the Controller to lease to the Asylum.* By the statute, the offense is the giving of the lease; the offense in the indictment is the voting for a resolution authorizing the proper officer to make a lease.

Penal statutes are to be strictly construed; in other words, the offense with which the accused is charged must be brought plainly within the letter and spirit of the the statute. Can it require argument to demonstrate that the passing by the Common Council, with the approval of the Mayor, of a resolution that a lease be executed by the Controller is not the giving of a lease? It is said by the counsel for the people that all the defendants could do toward giving the lease was to pass the resolution in question. That may be, but in order to convict them under the statute, the lease must be made. The making is the very essence of the offense, and if no lease has been made, then the statute has not been violated, and of course no offense committed. The counsel for the people suggested, also, that this resolution, approved by the Mayor, was a lease, within the principle decided by the Supreme Court in this District in the case of Lowber. It was held in that case, that in case of a resolution by the Common Council to purchase certain real estate of Lowber, the Controller, whose duty it was to complete the purchase, but which he refused to do, had no discretion whether he would obey the order of the Common Council. I have the opinion of the learned Justice in this case of Lowber before me. In it he says, "The heads of departments do not hold their places independent of the legislation of the Common Council, *and when such legislation is not in violation of law,* they have no right or power to refuse obedience to such legislation, because they may deem it unwise or improvident. On the contrary, they are only in the legitimate discharge of their duties when they comply with the legislative directions of the Common Council, *not passed in violation of law.*" I fully concur with the learned Justice in these views. If sound, they dispose of the position assumed by the counsel for the people. The Controller is, according to the opinion in the case of Lowber, required to obey those resolutions and ordinances of the Common Council which they have authority to pass. But he is not bound to obey those which they have not authority to pass. If then the defendants could not make a lease for more than ten years, and if the resolution required the Controller to make a lease for a longer term, he was not bound to obey, nor could the Court compel him to execute such a lease. If the Controller had executed the lease in obedience to the resolution in question, I entertain no doubt but he would have been liable to indictment for a misdemeanor, and that the offense of the defendants would thus have been perfected. How can this resolution be called a lease, when it was not intended as such, but contemplated an instrument thereafter to be drawn which should be a lease. Again, by the City Charter the Common Council and Mayor could not make a lease; that power is expressly conferred on the Controller, and the resolution conforms to the Charter and leaves the execution of the lease to the officer who alone could rightfully make it. Does this resolution partake in any respect of the form or nature of a lease. Does the resolution create a term in favor of the Asylum? Does not it give possession, or the right of possession—does it contain any agreement to let or pay rent—or any condition on which the estate, if there was one, should terminate? Could the Corporation maintain an action on this resolution for the rent? In short, could either the Asylum on the one side, or the Corporation on the other, maintain any action or proceeding on this resolution, as and being a lease of these premises in question. It seems to me not. And if not, then no lease for a term of more than 10 years has been granted, and of course no offense committed.

If I am right in holding that the actual giving of a lease is necessary to render the defendants liable under the clause of section 41, above referred to, it is just as essential to render them liable under the clause constituting the other offense of making leases otherwise than by public auction.

I must hold, therefore, that the second count of this indictment is bad, for the reason that it does not allege or show that any offense has been committed by the defendants, or either of them, within the true intent and meaning of sections 40 and 41 of the act of 1857.

It only remains to inquire whether the first count charges an offense for which the defendants can be put upon their trial. This count is for a conspiracy. It alleges the passing of the act of 1857; that Wood was Mayor and the other defendants Aldermen and Councilmen of this city; that, disregarding their duty, they did willfully, maliciously and unlawfully conspire, combine, confederate and agree together to violate and evade the provisions of the said act, by certain means which were then and there in themselves criminal, viz: by willfully, unlawfully and maliciously passing a resolution through the Common Council, and obtaining the sanction of the Mayor thereto, directing the Controller to execute a lease to the Asylum of certain premises described in the said resolution; that the Corporation owned the said premises; that those of the defendants who were Aldermen willfully, unlawfully and maliciously did vote in favor of and aid and assist in the passage of such resolution, and did obtain the approval of the Board of Aldermen to said resolution, and the same was duly certified by the Clerk of said Board; and the like charge against those of the defendants who were members of the Board of Councilmen: and that Wood, as Mayor, did willfully, maliciously and unlawfully approve of said resolution.

A conspiracy is defined to be a combination of two or more persons to accomplish an illegal object, or a lawful object by illegal means.

The 2d Rev. Statutes, 874, sec. 8, provides that if two or more persons shall conspire to commit any offense, &c., they shall be deemed to be guilty of a misdemeanor. Sec. 10 provides that no agreement, except to commit a felony upon the person of another, or to commit arson or burglary, shall be deemed a conspiracy, unless some act under such agreement be done to effect the object thereof, by one or more of the parties to such agreement. Although by the statute an overt act must be averred in order to complete the offense, yet the gist of the offense is the corrupt agreement. The conspiracy charged or intended to be charged in this instrument is to do an unlawful act. What is the unlawful object which the conspirators in this case are charged with conspiring to attain? The indictment alleges that it was to violate and evade the provisions of the said act (meaning the amended Charter of 1857), by certain means which were in themselves criminal, to wit, by passing a resolution through the Common Council directing the Controller to execute a lease, &c. The allegation that the statute was to be violated or evaded by means in themselves criminal, cannot help the count, as it is not shown what the means were, and so far as the facts alleged can aid us in determining the character of the means, they seem to be lawful. But what was the object sought to be obtained? The public prosecutor argues that that object was to give a lease for more than ten years, and without putting it up at public auction, &c. But no such object or design is charged. It is said the statute was to be violated by the passage of the resolution. If I have succeeded in showing that the passage of the resolution did not violate the statute, then certainly it was not unlawful. The count does not show by averment that it was the object of the conspiracy to create an illegal term, or to give a lease otherwise than by public auction.

The only other ground on which this count can be sustained is, by treating the allegation that the defendants conspired to violate or evade the act, sufficient without any specification of the particular section or clause of the act the conspirators designed and agreed to violate.

The English Courts have upheld indictments for conspiracies quite as vague and indefinite as this, as to the statement of the object of the conspiracy. In our own Courts a more stringent, and, as I think, a more just and sensible doctrine is insisted on, and the public prosecutor is required to state truly and specifically the precise object contemplated by the conspiracy. But as I can find no decision directly on the question, and as it is not entirely free from doubt, I shall hold the count sufficient in form in the respect alluded to.

As I have aimed to dispose of this case on the merits rather than on mere technical rules of pleading, I will assume, therefore, for the purposes of the case, that conspiring for an unlawful purpose is properly charged in the indictment, and that that unlawful purpose was the violation of the act of 1857, already cited. I have declared my opinion to be that the defendants, by voting for the resolution, were not liable for a misdemeanor, as the statute made the giving the lease and not voting for the resolution ordering the lease, the violation which is denounced as a misdemeanor. The last clause of the eighth section of the act of 1857, expressly declares that no Alderman or Councilman shall be questioned in any other place for any speech or vote in either Board.

We must give effect to this clause as well as to the 40th and 41st sections of the same act. In the view which I take of these provisions, there is no conflict between them. The statute not only does not seek to hold the member of the Common Council responsible for his vote, but expressly exempts him from all accountability therefor, unless it is the result of official corruption. He *is* responsible when he shall have aided in doing an act forbidden by law, and that act, when done, declared to be a misdemeanor.

If I am right in these views, it follows that although the votes of the defendants may be proved to show an overt act by the conspirators, yet it is not on the principle that the votes thus permitted to be proved are illegal, but as lawful acts done in execution of the conspiracy. Giving, as I think we must do, full force and effect to the exemption from responsibility for voting, their votes must be held lawful for all purposes. The public prosecutor cannot therefore rely on the defendants' votes for the resolution in question as any evidence of the unlawful confederacy; that must be proved by other and independent evidence.

I am therefore of the opinion that the second count of this indictment is insufficient, for the reason that it sets forth no crime or offense.

Second, that the first count is valid in law, and that the defendants must be held to answer said count.

The motion to quash is therefore denied, so far as the first count is concerned.

### FURTHER PROCEEDINGS IN THE CASE.

At the opening of the Court of Oyer and Terminer this morning, Mr. Blankman stated that he was counsel for Mr. Steers in the matter of the indictment against Fernando Wood and others, and being informed that the District Attorney still proposed to try the matter, he desired an opportunity to be heard in relation to the jurisdiction of this Court. He was prepared to show that this Court had no right to originate complaints or an indictment for misdemeanor.

Judge Mullen remarked that as it had been intimated the object of the prosecution was to carry up the case to the Court of Appeals, he understood none of the defendants desired to avail themselves of a plea to the jurisdiction.

It was finally arranged that Mr. Blankman should have an opportunity to present his views to-morrow morning.

### THE FIFTY-FOURTH STREET FRAUD.

The People agt. Joseph R. Taylor et al.

The defendants were indicted for conspiring to defraud the City Treasury in the matter of the Fifty-fourth street assessments for curbing, &c. Judge Edmonds appeared this morning as counsel for the defendants, and submitted a motion to quash the indictment, upon various grounds, which he proceeded to argue at length.

They made the motion, he said, not upon a mere formal defect, which could be corrected by a new indictment, but upon what they believed to be substantial grounds, holding that under no circumstances could such an indictment lie. There were two classes of people who had the least possible chance of justice from the jury-box.

A representative of one of these classes—the rowdies about town—was recently executed. The other class was those connected with the City Government, about which there had been so much hue-and-cry that it was almost impossible to keep prejudice against them out of the jury-box. The press was earnest in its praises and denunciations even of this Court. They desired to avoid the influence of this prejudice.

This man Taylor was authorized to collect large sums of money, and he had been advised that he had a right to retain his fees from the funds so collected, without being obliged to resort to a tedious litigation to obtain them from the city. The special collector had a right to 2½ per cent upon the whole amount of his warrant, whatever might be the amount he succeeded in collecting, and in this matter of the Central Park assessments he retained only that amount.

He was then forcibly ejected from his office, not legally removed, and his action to recover the papers, &c., was still pending. This indictment was only an effort to convert a civil right into a criminal action, and it was that effort which the defendant protested against, and upon which the motion to quash was based.

The indictment alleged only that the defendant received $15,500, which he did not pay over to the city; and this, he contended, did not constitute a fraud, or any other indictable offense. There was no deceit alleged or pretended, and yet there could be no such thing as fraud without deceit.

District-Attorney Blunt replied to the argument. He thought the practice of bringing up every imaginary objection upon motions to quash indictments was calculated to obstruct the administration of justice. He felt it his duty to insist upon the strictest rules, and notified the defense that whatever should be the decision, he would ask to have it put in such a shape as to put the defendant upon his demurrer.

The statute under which this indictment was found, he said, was plain and unmistakable. The duties of the Collector of Assessments were clearly defined. This Central Park assessment was not a solitary item, but the condition of the accounts of other deputy collectors did not appear before this Court. There was no hardship or oppression in compelling this defendant to produce his claims against the City Government by this action. The averments in the indictment were distinct, clear, and sufficiently set forth the charge against the defendant.

Judge Whiting followed for the prosecution, and Mr. Brady closed for the defendants.

Decision reserved.

## SUPREME COURT—General Term—Nov. 21.—Before Judges Davies, Clerke and Sutherland.

### APPEAL FROM SURROGATE'S DECREE.

David Lyman, Appellant, agt. Parsons et al., Respondents.

This case, which is an appeal from a decree of the Surrogate of this county, made Dec. 26, 1857, was argued in May last, but the opinion was very recently delivered. Hiram Ketchum for appellant; D. D. Field and W. Stanley for respondents.

Sutherland, J.—I think the construction of the will of Samuel Parsons by the Supreme Court of Errors of Connecticut is the true construction, and that of the Surrogate of the County of New-York erroneous.

The testator, a resident of the State of Connecticut and domiciled there, made his will in that State, and died there Oct. 24, 1848, leaving a widow and four children—one son and three daughters—all minors at the time of his death; and an estate valued at about $147,000, a portion of which consisted of a leasehold interest in two houses and lots in the City of New-York, valued at about $18,000; six shares of the stock of an Insurance Company in New-York; and promissory notes against persons and firms in the City of New-York, amounting to about $84,000. The testator by his will, dated the 7th day of October, 1848, after giving and devising to his wife his homestead, with the furniture, books, carriages, &c., and a piano-forte to his daughter Catharine, and an annuity of $700 to his wife, to be paid to her by his executors out of his estate, until her decease or marriage; gives and devises all the residue of his estate to his executors named in the will (David Lyman, the appellant, and his wife) *in trust,* two-fifth parts thereof for the sole use and benefit of his son Joseph H. Parsons, and *his heirs* and assigns forever; and the remaining three-fifth parts for the sole use and benefit of his daughters, Catharine, Elizabeth and Caroline, in equal shares to them respectively, and their respective heirs and assigns forever. The testator then declares *how* and *in what manner* the trustees are to apply and dispose of the trust fund for the *use and benefit* of his children and their issues, during their minority, respectively; the Trustees are directed to expend for their support respectively such sums as may seem expedient, charging the sums expended for each toward his or her share of the estate. The Trustees are directed to pay his son, on his attaining the age of 21 years, $5,000, and a further sum not exceeding $5,000, if they think it will be for his interest. On his attaining the age of 23 years, they are directed to pay him such an amount as they shall deem it most for his interest to receive, not exceeding $10,000; on his attaining the age of 25, such sums as in their discretion they shall deem it most for his interest to receive, but not exceeding in any one year $10,000; and they are directed so to continue to make such payments, from one period of two years to another, until the share of the son shall have been paid off and discharged.

The trustees are to pay to each of the daughters $2,000, on their respectively attaining the age of twenty-one, and every two years thereafter $2,000 until the share of each shall have been paid off; but the trustees, in the exercise of a sound discretion, after the first payment to the daughters, are authorized to diminish the subsequent payments, provided they use no unnecessary delay in making the ultimate payment of the share of each daughter.

If the son dies before receiving his share, leaving no lawful issue, then his share remaining in the hands of the trustees is to be paid over in equal shares to his daughters. If any one or more of his daughters should die before receiving payment of their respective shares, leaving no lawful issue, their shares remaining unpaid shall be paid two-fifths of each to the son, and the remainder to the surviving daughters.

If any one or more of the children die leaving lawful issue, such issue shall be entitled in equal portions to the share or shares of the respective parent or parents, remaining in the hands of the Trustees; but in such case the Trustees are to hold and dispose of such share or shares in such manner that such issue only and their legal representatives, and no other person or persons shall have benefit or advantage thereof.

The executors are directed to sell the real estate in New-York and Connecticut, and to add the proceeds thereof to the general fund.

The funds arising from the bills of exchange and promissory notes, as well as all other funds coming into their hands, are directed to be invested in safe interest-paying National or State Stocks, and some few banks of character and credit.

No direction is given as to the interest or income of the estate as distinguished from the principal.

These are the principal features and directions of the will.

It is very plain that the testator intended that the bulk of his estate, real as well as personal, should be converted into money and invested and kept together by his trustees as one fund; and that out of the same, and its accruing interest or income, the trustees should from time to time pay the annuity to the widow, the sums deemed expedient for the support and education of the children during their minority; and as they severally attained the age of 21, to each a certain other sum; and after that to pay over the residue of the fund or estate in their hands, with its accruing income to the children and *their issue* in certain periodical payments and in a certain manner with certain discretionary powers given to the trustees specified in the will, with wonderful precision of language.

The direction with regard to those payments for the support and education of the children during their minority, and to them and their issue on their attaining their majority, and afterward so carefully given in the will, may be considered and is a declaration by the testator of the manner in which he intended them to be benefitted by his estate and by his previous direct bequest and devise thereof to his executors in trust for their *use and benefit.*

The testator did not intend that his children should have the interest or income of the fund, and the benefits and payments specifically directed by him in addition; but he intended the interest or income of the fund to be added to the principal, and to be kept together, and that out of this fund increased by these additions of income or interest the payments directed by him to be made by his Trustees, should from time to time be made. It is very probable and reasonable that the interest, or sufficient to make the payment, would first be taken and used.

If there is any unlawful accumulation or suspense of the absolute power of alienation directed by the will, or involved in its provisions, it is for the Courts in Connecticut to say so.

The testator lived there, made his will there, died there, and this whole trust estate is to be considered as converted into money under the power of sale, and invested by his trustees living there; the will is to be carried into effect, and the rights of parties beneficially interested under it are to be determined according to the laws of that State. The testator violated no law of this State in making his will, and none need be violated in carrying it out.

It is very clear that the Surrogate of New-York was led to his construction of the will by too close attention to the particular clause of the gift and devise to the executors in trust for the use and benefit of the children, their heirs, &c., without paying sufficient attention to the subsequent provisions of the will qualifying and explaining this use and benefit, and showing the testator's intention.

If the construction of the will was called for by the proceeding before the Surrogate of New-York, I think, therefore, his construction was erroneous, and that the parts of his decree founded thereon, declaring that the biennial payments directed in the will to be paid to the children of the testator, are applicable alone to the principal or corpus of the estate, and declaring that the children are entitled to, and that the executors distribute the net income of their shares from the time of the testator's decease, should be reversed.

The interest of the children in their unpaid shares can hardly be said to be vested, for, on the death of a child, his or her share remaining unpaid would go to the surviving children, or to the issue of the child so dying, under the will, and not under the statute for the distribution of intestate estates.

For reasons which will be very briefly stated, I also think that part of the decree of the Surrogate of New-York adjudging and decreeing that the appellant should account to said Surrogate for the assets realized by him from persons and firms residing in the City of New-York, and paid to the appellant before letters testamentary were granted by the said Surrogate, was equally erroneous and should be reversed. I suppose it would be correct to say that the title to all the personal property or moveables of the testator, wherever situated, vests in his executors on his death by virtue of the appointment in the will rather than by the probate of the will and the granting of letters testamentary. (Schultz agt. Pulver, 11 Wend. 363; Valentine agt. Jackson, 9 Wend. 302; 1 Williamson Ex'rs, 239.)

The probate and granting of letters testamentary is a municipal regulation for the purpose of furnishing authenticated evidence of a title of the executor and of his right to assert and inforce it. But one State cannot make a rule or regulation of evidence for the courts and authorities of another State, and therefore whether letters testamentary granted in Connecticut shall be evidence of the executor's title and rights in New-York, depends upon the laws of New-York.

But as this question of evidence cannot arise except in some suit or legal proceeding by or against the executor for *inforcing or attempting to inforce* his right and title, I must confess I cannot see how it can arise in the case of a voluntary payment to a foreign executor, the party paying the money taking upon himself the risk of the title of the executor and of his right to receive payment.

In this case, it appears that about $84,000 of the estate of the testator consisted of promissory notes of persons and firms residing in the City of New-York; that all of these notes were deposited by the executors in the Merchants' Bank of the City of New-York, and in the Middlesex County Bank in Connecticut, and that they were all voluntarily paid before October 27, 1849.

Who can find fault with this voluntary payment, without suit, fraud or force? The parties who paid the money cannot and do not; for they have not been called upon for the money again, and it is not pretended that they have not paid it to the right person.

The legatees, or those beneficially interested under the will, cannot, for the money has been paid to the right persons, and has gone to the right place—into the general fund of the estate, in the hands of the trustees, to be distributed and paid out by them under the will of the testator, the construction of which, it is admitted, belongs to the courts in Connecticut, or, at all events, is to be construed and carried into effect according to the laws of Connecticut.

Who, then, can complain? And why should the Surrogate of New-York have assumed jurisdiction over the moneys thus voluntarily paid to the appellant by the New-York debtors, and which have been added by him to the general fund of the estate in the hands of the trustees in Connecticut, and had been held by such trustees there, to be disposed of under the trusts of a will executed, and which took effect there nearly six years ago, when letters testamentary were issued to the appellant by the Surrogate of New-York?

In my opinion it is clear both on principle and authority, that the Surrogate of New-York had no jurisdiction whatever over the moneys thus voluntarily paid to the appellant by the New-York debtors previous to the granting of the letters testamentary by said Surrogate.

(Vroome agt. Van Horne, 10 Paige, 556, 557, and authorities cited by the Chancellor in that case; Selectmen of Boston agt. Boylston, 2 Mass. R. 384.)

It is true that it is perfectly well settled that the executors of Samuel Parsons could not have maintained a suit in this State by virtue of the letters testamentary granted in Connecticut. (McNamara agt. Dwyer, 7 Paige, 246; Schultz agt. Pulver, 11 Wend. *Supra.*)

But it appears equally well settled that the will was to be interpreted, and the personal estate of the deceased was to be disposed of and distributed according to the laws of the country in which he had his domicil at the time of his death. (Schultz agt. Pulver, 11 Wend., *Supra;* 4 John. Ch. R., 469.)

The Surrogate of New-York admits in his opinion in this case that "this estate is to be distributed, and the will interpreted according to the laws of the domicil of the testator."

Whether the trustees under the will have discretionary power to pay to the testator's son, Joseph H. Parsons, out of the trust funds in their hands, at and after his having attained the age of 25 years, until his entire share shall have been paid off, is a question, I think, for the Court of Connecticut, where the fund is.

It is very clear, for reasons before stated, that the part of the Surrogate's decree declaring that the trustees have this discretionary power to pay him $20,000 biennially out of the principal of his share, as distinguished from the income, ordered to be paid over to the children by the appellant, is erroneous and should be reversed.

In my opinion, all those parts and portions of the decree of the Surrogate appealed from by David Lyman should be reversed.

General Term—Nov. 23.—Before Judges Davies, Clerke and Sutherland.

### THE CASE OF SCHOOL COMMISSIONER BARRY.

The People agt. Richard Barry.

This case was moved on to-day by Mr. Blunt, the District-Attorney, for the purpose of having the order of Judge Russell, quashing the indictment against Barry, reversed. He stated that Barry had pleaded guilty to an assault on Mr. Wolffe, upon which he was sentenced to Blackwell's Island for four months; that Judge Russell had ordered the conviction to be set aside, on the ground that defendant had not pleaded guilty to the other indictment.

Mr. Hall, for the defendant, raised an objection that the District-Attorney had not given him the four days' notice required by the statute.

The Court decided that the case must go off, and that proper notice should be given.

### THE CASE OF MOORE AND LIVINGSTON.

Michael Price Moore agt. A. Livingston.

This is an appeal by Mr. Livingston from the decree of Judge Roosevelt by which the title of certain valuable property, situated in Broadway, near Courtlandt street, and valued at about $70,000, was declared to be vested in Mr. Moore. It will be remembered that the case attracted considerable attention when it was on argument before Judge Roosevelt, at Special Term, some eighteen months ago. Charles O'Conor for appellant; James T. Brady and Francis G Young for respondent.

### THE MANDAMUS AGAINST THE BOARD OF CANVASSERS—THE SICKLES ELECTION.

The People, ex rel., Daniel E. Sickles agt. The Board of Canvassers of the County of New-York.

The alternative mandamus to compel the Board of Canvassers to declare the election of Daniel E. Sickles as a member of Congress for the IIId Congressional District, being returnable this morning, Mr. Graham appeared for Mr. Sickles, and several of the canvassers were in court.

Judge Davies stated, that in granting the writ yesterday, the court had inadvertently made it returnable before the General Term. It should have been to the Special Term, as this court had decided that cases of this character should be heard in the first instance at Special Term. The counsel would find an authority in 12th Barbour. Judge Davies therefore suggested that it be postponed till Thursday next, which was agreed to.

In Chambers—Before Judge Davies.

### THE WEST WASHINGTON MARKET CONTROVERSY.

The People and Taylor and Brennan agt. The Mayor, &c., et al.

The arguments pro and con on the motion to confirm the report of Mr. Cowles, the referee in this case, were concluded this morning, and the Judge reserved his decision.

## UNITED STATES DISTRICT COURT—Nov. 23.—Before Judge Betts.

### DECISION IN ADMIRALTY.

The schooner Fannie, James S. Henkle, agt. Mills, Reed and others.

The libelants proceeded *in rem* against the above schooner, to recover wages for a voyage on board of her from the port of Norfolk, in Virginia, to this port, where she arrived by the way of Cuba, about the 9th of September last.

The libel was filed on the 25th of September, and the warrant of attachment was issued thereon same day, and was returned as served upon the vessel the 12th of October thereafter.

On the 2d of October, Henckle appeared, bonded the vessel, and interposed a claim to the vessel by Vance, her master. On the 23d of October the proctor of the libelant filed his caveat in court against the admission of the intervention of the claimant, unless stipulation or security for costs had been given by him, pursuant to the rules of the Court, without which the proctor of the libelant insisted that the default of the claimant was perfected.

On the same day the proctors of the claimant obtained an order from the Judge of the Court allowing the claimant, because of the sickness of his proctor, until the 26th of October, to file an answer in the action, which order of the Judge was also filed the 23d of October.

The warrant of attachment was returned by the Marshal the 12th of October, and the libelant obtained an order of Court the same day that the Marshal published notice to all persons to appear and intervene for their interest in the cause on the 19th day of October. The Marshal, on the 19th of October, returned and filed his return to the order that such publication had been made, upon which return the libelant obtained an order for a *default nisi,* whereupon a proctor appeared and moved an allowance of time to put in his answer until the 23d, which was granted him by the Court.

It is alleged that the libelant took proofs in the cause on depositions on the 11th of October, and that the claimant also examined witnesses on his side on the 23d of October, and that the vessel was thereafter dispatched to sea and has since remained out of the jurisdiction of the Court.

Some time in October (the date does not appear upon the papers) the proctor of the claimant served upon the proctor of the libelant an affidavit of John Vance, master of the vessel, with the following notice: "On the foregoing affidavit, and on the proceedings therein referred to before Joseph Bridgham, a motion will be made before this honorable Court on the 26th day of October, 1858, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, that the process herein be set aside, or for such relief as may be just. Dated Oct. 5th, 1858."

The jurat of the affidavit was dated October 7. It alleged that this crew (of which libelant was one), on the arrival of the vessel from her aforesaid voyage, "at and off Staten Island, and before the discharge of any part of the cargo, and before the arrival of the vessel at her port of destination, refused to work or further perform duty; that they were taken out of the vessel for the offense; and that, after being taken out, they procured a summons from Joseph Bridgham, a Commissioner, &c., who heard the claim and decided that no cause existed for a process, and denied them a certificate; whereupon the libelants, without security or application to the Court, or any order of the Court, instituted this suit and issued process; and deponent's vessel has been and now is arrested, and under arrest of the United States Marshal, at the suit of the plaintiffs. That the causes of action on the two suits are identical and the same in all respects."

The hearing of the motion was deferred between the respective proctors from time to time, after the 26th of October, until the papers were mutually by them submitted to the Court without argument on this day.

The case stands substantially upon the positions presented in that of Robinson and others against the brig Lillie Mills, decided on the 5th inst. The merits of the motion consist in the assumption that the libelant has before had a trial of the same cause in another tribunal, and a decision therein given against him, and that he is thereby barred bringing this suit for the same subject matter. If the claimant has obtained judgment against the libelant upon this demand, that fact may be given in evidence in this action—(Young agt. Black, 7 Cranch, 567; 1 Chitty Pleadings, 472)—and that defense is the proper mode of relief, and not an application, by summary motion to prevent a further hearing or try the fact of a prior judgment upon affidavits.

The Court, accordingly, will not now inquire, under this mode of proceedure, whether the hearing before the Commissioner was on the merits, or if the matter was disposed of on points of form merely. If an effective hearing was not had between the parties before a Commissioner—and this case ought in law to have been commenced by summons, and not by warrant of arrest against the vessel—the omission to proceed by summons and hearing on it, returns conformably to the provisions of the act of Congress of July 20, 1790, would be an irregularity of practice which might be waived by the claimant, and the direct action against the vessel in the first instance would be sustainable by virtue of such waiver. (The brig Lillie Mills above cited.) An acquiescence in the new proceedings, and especially a concurrence in them, is tantamount to an explicit waiver of all irregularities which may have occurred, and amount to an adoption of the present action as the proper one in which the merits of this controversy are to be determined. This is a familiar principle in the practice of common law courts (Graham's Pr., 366-67), and was approved and adhered to in the United States Circuit Court in this district.

In the case of Huggons agt. Sedgwick, where a party had been arrested and held to bail on a capias returnable out of term, and also on Sunday, the defendant gave notice of appearance by attorney, and applied to a Judge, and obtained an order to mitigate bail, and then subsequently moved to quash the writ for irregularity. The Court held that by these proceedings the defendant had waived the irregularities, and he was allowed no further relief than an extension of time to put in his plea to the action, under the condition, moreover, that he take short notice of trial.

The practice of Admiralty Courts is still more largely relieved, by strictness in forms and technicalities, than those of law, it being the governing spirit of civil law tribunals to mold their processes and procedures so as best to attain the ends of justice and fair right between litigant parties. (Betts's Practice, 57; Benedict Pr. § 358, 483.)

In my opinion, the motion made by the claimant in this case is out of time, the right to resort to it having been lost or relinquished by the positive acts of the claimant in the cause after the irregularities complained of were known to him.

Decree accordingly.

Messrs. Beebe, Deane & Donohue for claimants; Mr. A. Nash for libelant.

## UNITED STATES CIRCUIT COURT—Nov. 23.—Before Judge Betts.

### OPENING OF THE NEW COURT ROOMS.

This morning, the United States Circuit Court was opened in the new rooms in Chambers street, by Judge Betts. The jury were called and discharged till next Thursday morning, at 11 o'clock, when Judge Nelson will be present, and continue to hold the Court till the Supreme Court will again be in session.

The United States District Court was adjourned to next Tuesday morning, when Judge Betts will preside.

### PATENT SUIT.

Horace H. Day et al. agt. Lockwood Brothers.

This is another of the suits brought in equity to stop the sale chiefly of foreign-made vulcanized rubber fabrics, in violation of the patent of Goodyear, the exclusive right to which, for certain styles of goods, is vested in the complainant Day. The specific goods, produced before the Court, were gloves, suspenders, belts, webs, &c., which were proved to have been made according to the patent of Goodyear, and sold at public auction in the City of New-York by the defendants. An injunction was granted in this case.

## SURROGATE'S COURT—Nov. 23.—Before Mr. Edward C. West.

### THE WILL OF JAMES P. ALLAIRE.

In the matter of the Will of James P. Allaire, deceased.

This case came up to-day, and was adjourned to Saturday. Testimony has been taken as to the formal execution of the will, and the parties propounding the will have rested. The case is now with the contestants, who proposed to show undue influence and incapacity on the part of the deceased to make the will.

They propose to show an extraordinary state of facts, by which they allege that deceased was induced to make the will which is now offered for probate.

The following is a copy of the will:

I, James P. Allaire, late founder and steam-engine builder of the city of New-York, do make, publish and declare this my last will and testament, hereby revoking all former wills by me at any time heretofore made.

I do hereby appoint my wife, Calicia Allaire Tompkins Allaire, executrix of this my last will and testament.

I do give, devise and bequeath unto my said executrix all my real and personal property of every kind in trust: First, to pay all my debts; secondly, to give to my son, Throckmorton A. Allaire, the farm on which he now resides, which I purchased from Levi Knott, during his natural life, and at his decease said farm is to be divided among his children, share and share alike; and beside the above, to give to him the sum of $100; to give to my daughter, Frances W. Roe, the sum of $100; to give to my daughter, Maria H. Andrews, the sum of $100; to give to my son, James, the sum of $100; to give to the daughters of my deceased son, Charles B. Allaire, or to the survivor of them, the sum of $500.

Thirdly, after paying these legacies, I give the remainder of my real and personal property to my said wife Calicia, for her own use, benefit and maintenance during her natural life; and at her decease the same is to be given to my son, now called Hal, and other children, if there should be any by her; and in case of the death of such child or children, my said wife is empowered to sell or bequeath the same property to whomsoever she may please.

In testimony whereof I have hereunto set my hand and seal this 7th day of October, in the year 1850.

The will is witnessed by Abram Calsey, No. 102 Sackett street, Brooklyn; Louisa Hall, No. 132 East Thirteenth street, New-York; and Benjamin Tatham, No. 107 East Broadway.

## SUPERIOR COURT—Nov. 23.—Before Judge Hoffman.

### MARINE INSURANCE.

John Staar DeWolf agt. The Virginia Fire and Marine Insurance Company.

This was an action to recover on a policy of marine insurance on the brig Helen, for a voyage from Cardiff to Savannah and back. The vessel was owned in Liverpool. A few days after she left Cardiff she was abandoned by the master and crew, on the ground that she was in such a leaky condition that she could not be kept afloat.

The defendants set up that the vessel was unseaworthy before she started on the voyage; that there was no necessity to abandon her, and that the day after she was abandoned she was fallen in with by the ship Westmoreland; that her stays appeared to have been cut, and that she had only 14 inches in her hold. Plaintiffs showed that there were five feet of water in the hold when she was abandoned, and that it was increasing one foot per hour. Verdict, for plaintiff, $4,689, the amount claimed. Mr. Stanley, for plaintiff; Messrs. Moulton & Stoughton, for defendants.

Before Judge Bosworth.

### LIBEL.

Wachter agt. Quanzer.

This was an action for an alleged libel published as an advertisement by defendant over his own signature, in a German newspaper called *The New-Yorker Demokrat.* The libel was in the German language, and, translated into English, reads as follows:

If a certain Wachter should dare again to buy and borrow anything for himself on the name Junger, No. 283 Third street, everybody can think forthwith that it is only a swindle and fraud, for the above-named individual never had permission of the undersigned to buy, much less to borrow upon his name. But it is not that Wachter, who has the right to watch, but that Wachter, who, in Division street, made himself invisible on account of the much borrowing and not paying; that is to say, that by his away and departed money another name is [illegible] bank, whereby the creditors were not paid. This individual now lives in Fifty-sixth street. Likewise, I call upon the above-named Wachter to return the bakery utensils taken away from me, in default of which I shall prosecute him in Court as a thief.

(Signed) JUNGER, No. 283 Third street.

N. B.—It is still a fine thing if a man can pass everywhere, and show, if demanded, his bare back; but there are people who dare not, very well, show it, because there would be found the mark of the Swiss gallows upon it.

The plaintiff alleged that this publication had materially injured him in his good name, &c., for which he claimed damages.

The defendant answered that the allegations were correct and true, and denied that the plaintiff had sustained any damages.

The Jury found a verdict for plaintiff for $2,000.

Before Judge Pierrepont.

### SUIT AGAINST THE SHERIFF.

Welden agt. Orser, late Sheriff.

This was an action brought to recover the value of certain property, alleged to have been levied upon by a Deputy of the late Sheriff. It appeared that the plaintiff, Welden, some three years ago, issued an execution against the goods and chattels of Lieutenant Charles S. Cooper, formerly an officer in Mexico, then an employee of the Custom-House, and since dead. Cooper lived in tenement lodgings in Nineteenth street, and was very poor. The officer made a levy, as would seem, though upon this point there was contradictory testimony, upon some household furniture of trifling value. Cooper's wife was lying in the room at the point of death. She died a few days afterward. Welden had told the Deputy-Sheriff that this woman was Cooper's mistress, and not his wife. Assuming such to be the case, the officer made a levy, but afterward becoming satisfied that this was a mistake, he abandoned the levy, as in case of the woman being Cooper's wife, all his household stuff would be exempt under the statute. Welden sued the Sheriff for the value of the property, which was variously appraised, by different witnesses, from $10 up to $38.

The case turned upon the question whether Cooper was married or single. Evidence was given that he had often called the woman he lived with his wife, and that at his request she was buried by the Eureka Lodge of Freemasons, of which he and Weldon both were members. On the other hand several witnesses swore that Cooper had stated that he was not married to her. The Judge charged the Jury that an actual ceremonial marriage by a clergyman or magistrate was not necessary to constitute the woman Cooper's wife, but that if he lived with her as such, and represented to his friends and the world that she sustained that relation to him, she must be regarded in the eye of the law as his wife. Whether Cooper had in fact made representations sufficient to establish a matrimonial relation, was for the Jury to decide. If they were of opinion that the woman must be considered Cooper's wife, then he was a householder, and his furniture was exempt from execution. The Jury found a verdict for defendant.

### SUIT FOR RENT OF A THEATER.

Lafarge agt. Halsey.

This was an action to recover four weeks' rent of Laura Keene's Theater in Broadway, with interest, at the rate of $400 per week. The defendant, Halsey, was the guarantor of Laura Keene's lease. The lease was admitted, but from a defect in the pleadings, the defendant was unable to introduce proof, as he professed his ability to do, that Laura Keene had not occupied the Theater during the four weeks for which rent was claimed. The answer admitted the lease and entry. Accordingly, under direction of the Court, the Jury found for plaintiff $1,864 97.

### COURT CALENDAR—This Day.

Supreme Court—General Term.—The calendar will not be called again this term. The Court will adjourn to-day till the 31st of December next.

Supreme Court—Circuit—Part I.—Same as yesterday. Part II—Nos. 386, 1574, 2278, 38, 1948, 2400, 1398, 2600, 2606, 2608, 2612, 2616, 2618, 2620, 2622, 2624, 2628, 2630, 2632, 2634, 2636, 2638, 2640, 2642, 2644, 2646, 2648, 2650, 2352, 2654, 2656, 2658, 2660, 2662, 2664, 2666, 2670, 2672.

Superior Court.—Nos. 143, 491, 492, 493, 100, 147, 435, 610, 616, 617, 624, 629, 633, 641, 642, 538, 645, 647, 643, 649, 650, 651, 652, 657, 658, 659, 660, 663, 664, 666, 667, 668, 669, 670, 674, 675, 676, 678, 680, 684, 685, 686, 687, 689, 690, 691, 692, 694, 695, 696, 697.

Kings County Circuit Court—Nos. 25, 84, 107, 63.

Brooklyn City Court.—Nos. 21, 25, 33, 34, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59.

# PUBLIC MEETINGS

## PROF. LIEBER'S THIRD LECTURE.

Prof. Lieber commenced his review of Asiatic commerce yesterday. If we took a terrestrial globe and examined the Eastern Continent without reference to names, we should find it divided into two well-defined sections, and we should feel the necessity of a separate name for the quarter of the globe which we called Africa. But from China to Lisbon we could find no physical line of demarcation which would justify the immense difference between the ideas suggested by the words Asia and Europe. This difference was found in all the life, literature and history of the two divisions, yet we were obliged to look to Asia for the origin of nearly everything in Europe. Commerce, so far as we know, originated in Asia. Ninus and Sardanapalus had engraved their names on the tablet of history while thick, impenetrable darkness hung over all Europe. On looking at the globe, too, we found that there was a belt of country which had monopolized the history of the world; we would call it the historical belt. Along this, civilization had steadily moved since the earliest times of which we knew, from India, and perhaps China, north-westerly toward England. This course seemed now to be changed with our colonization in Australia and the Southern Hemisphere. Commerce must have been coeval with history; but, as a comprehensive movement, it began in Asia. Asiatic trade we knew partly through the Phenicians, partly through the Old Testament, through the Greeks and through our own observation of the countries in their present state. Asia, far less progressive than Europe, seemed for a long time to have remained stationary. The people of Asia were to-day the same essentially as 2,000 years ago. From these sources we learned that Asiatic trade consisted chiefly in products of Hindostan and China, carried on by caravans in the North, and by the vessels of the Arabians in the South, until they reached Phenicia and Egypt, whence they were distributed over Europe. This trade consisted almost exclusively in articles of luxury, pearls, precious stones, cinnamon, incense, which were consumed by the ancients to an immense extent, and silks and cotton goods of the finest fabric. Ancient freights were enormously high. Imagine the cost of the camels of a caravan—one to every 500 pounds of freight—the hire of the camel-drivers, the risks of the journey; or, if by sea, the insecurity of property upon the water, as the right of property afloat was not acknowledged until long after the right of property on land was well established. Then imagine the long stretches traversed. Suppose a caravan to start through the Desert of Cobi, where, probably, it received some gold, the only metal everywhere to be found; then to pass through the enormous mountains of higher Asia; then, after traversing many long distances, to separate, sending off branches as far as the Jaxartes, others to Babylon, where, perhaps, raw silk would be manufactured; others beyond the Caspian until they should finally reach Asia Minor and Phenicia, Asia Minor, India and Babylon, had roads when they existed nowhere else. The commerce of Asia was, therefore, necessarily limited. Yet there was a kind of aroma about the productions of India, its spices and its jewels, although far less important in real value than Goshen butter carried to Smyrna. This aroma was one of the great incentives to maratime discovery; it pervaded the age and the poems of Camoens. It was something like that which wine-growing countries had for us, and which made us learn with surprise the actual condition of the vignerons of the Bourdelais, far inferior to that of the Genesee farmer. Still this was a striking instance of the universality and uniformity of men's desires, and the earth's local inability to satisfy them. All men liked the pearls of the East, and the incense of Arabia; but only Arabia and the East produced them. The river-carriage of India was not to be forgotten; according to Arrian that was found in a good degree of advancement. But river navigation in Asia was pretty much confined to India; although there were many large rivers there. Babylon had only miserable boats in the Euphrates and Tigris, from lack of wood with which to build them. What there were on those rivers were built in America. But one of the greatest clogs on the commerce of Asia was the necessity of direct barter in all commercial transactions. That wonderful piece of paper by which the value of a cargo of cotton delivered in Liverpool could be used to purchase a cargo of tea in Canton, the bill of exchange, had not been invented. The Asiatic merchants were Arabians, the New-Englanders of that quarter of the globe. The articles of commerce were necessarily restricted. Sugar and rice, two precious commodities, desired of all men, were too heavy for the caravans, nor did they enter much into the maratime trade. Another and a powerful cause of the smallness of Asiatic trade was that the highest Asiatic statesmanship consisted in conquest and the ruin of the conquered countries. This was laid down by their lawgivers, even by those who had been raised to the heavens. So they drove away from a conquered country everything that could be driven, and carried everything that could be carried. Tamerlane sold in one day 12,000 slaves to the Pacha of Egypt. To this policy Persia was an exception. The Persian rule over Asia Minor was limited to the exaction of a moderate tribute, and did not hinder the trade of the Egean ports with Greece.

## GOVERNORS OF THE ALMS-HOUSE.

The Board met yesterday afternoon, Mr. Smith in the chair.

Mr. Dugro moved that the Board refer the requisitions to a Committee, and dispense with the reading of the minutes, which was adopted.

Mr. Smith then announced to the Board the decease of their friend, and late associate, Cornelius V. Anderson. He stated that for eight months past he had been afflicted with a peculiar malady, that baffled the physicians. Four weeks ago he retired to his home, never to leave it again. The speaker had waited upon him constantly during his illness, and bore testimony to his Christian patience and resignation in the midst of the most acute physical pain. He died as he lived—a humble, unaffected Christian. Mr. Smith said:

Mr. Anderson commenced his public life while young. In 1837, when only 28 years of age, and serving as Foreman of Engine Company No. 1, he was appointed to the responsible position of Chief Engineer of the Fire Department of this city. This was at a time when the Department was in a complete state of disorganization, from the troubles growing out of the dismissal of Chief-Engineer Gulick, and the appointment of Mr. Hoffmire to his office. The judicious measures of Mr. Anderson soon calmed the angry excitement, and the Department was never in a more efficient condition than during his administration. When he assumed the duties of his office he found the annual expenses of the Department $72,000. During his term, its force and equipment were doubled, and yet he reduced its expenditures to about $30,000 per annum, or less than one half of what they were at the time of his appointment, and less than one quarter what they are at the present time. In 1848, the arduous duties of the office having seriously impaired his health, Mr. Anderson resigned the Chief-Engineership, and was elected Register of this city and county, by a vote which showed the estimation in which was he was held by citizens of New-York. As an evidence of the manner in which his new duties were discharged, we may mention that during his incumbency of three years, about forty thousand dollars of surplus fees were paid into the city treasury. Neither before nor since have five thousand dollars been paid in during an equal term of service. In 1851 the Lorillard Insurance Company was organized, and Mr. Anderson received an appointment as its President, and continued to hold that office up to the day of his death. The prosperity of that company is the best evidence of the ability with which its affairs have been administered. While a member of the Board of Governors all his colleagues could bear testimony to his thorough honesty of purpose. He died as he lived, possessing the sincere respect and confidence of the public.

Mr. Townsend testified in a few feeling remarks to the worth of the deceased, and moved the adoption of the following resolutions:

*Whereas,* The sad and mournful intelligence of the death of Gov. Cornelius V. Anderson has been communicated to this Board, and whereas we deem it alike a privilege and a duty to offer our tribute to his memory. Therefore,

*Resolved,* That in the death of our late associate, Cornelius V. Anderson, we have to mourn the loss of one whose strict honesty and courteous bearing had endeared him to all his friends, and commanded the respect of the entire community.

*Resolved,* That we bear willing testimony to the fidelity with which Mr. Anderson has discharged the duties of the various public trusts committed to his charge, and more especially in this Board. His unremitting attention here to the interests of the city, his unceasing opposition to extravagance and wasteful expenditure of money, mark, in indelible lines, his character as an honest man and a faithful public servant.

*Resolved,* That, as a mark of our respect for the deceased, this Board will attend his funeral in a body, and that these resolutions be entered on the minutes and published in the daily papers, and a copy thereof sent to the family of the deceased.

Mr. W. C. Pinckney seconded the resolutions, which were unanimously adopted.

The Board adjourned, on motion of Mr. Gunther, to meet at the funeral of the deceased.

Appended is the weekly statement of the Board:

| | |
|---|---|
| Number remaining Nov. 13, 1858 | 7,467 |
| Admitted | 1,229 |
| Total | 8,696 |
| Died | 25 |
| Discharged | 1,073 |
| Sent to Penitentiary | 106 |
| Sent to State Prison | 10—1,214 |
| Remaining Nov. 20 | 7,482 |
| Increase | 15 |

| | | | |
|---|---|---|---|
| Bellevue Hospital | 792 | Randall's Island Hospital | 229 |
| Lunatic Asylum | 666 | City Prison | 352 |
| Alms-House | 1,579 | Second District Prison | 8 |
| Penitentiary | 813 | Third District Prison | 27 |
| Isl. Hos. from Workhouse | 265 | Fourth District Prison | 0 |
| Isl. Hos. from Almshouse | 74 | Colored Home | 304 |
| Workhouse | 858 | Colored Orphan Asylum | 180 |
| Small-Pox Hospital | 4 | Children at nurse | 214 |
| Randall's Island | 1,136 | City Cemetery | 9 |

| | |
|---|---|
| Total | 7,482 |
| Number remaining Nov. 21, 1857 | 7,437 |
| Increase | 45 |

## JERSEY CITY COMMON COUNCIL PROCEEDINGS.

An adjourned meeting of the Common Council was held at the Lyceum last evening.

A communication was received from Charles J. Farley, stating that he had been appointed a Special Detective for the purpose of ridding the city of thieves and burglars. This he claimed to have nearly accomplished, and had been persecuted by trumped-up charges of larceny and burglary, and, in his opinion, these charges had been made by thieves in order to screen themselves. Mr. Farley claimed that he had been put to an expense of over $50 to defend these trumped-up charges, and asked the Common Council to reimburse the money.

Ald. Tilden moved that the communication be sent back. He said it was an insult to the Board and slanderous to one of its members, against whom no one could speak aught. He stigmatized Farley as a scoundrel. Justice had not been done him or he would now be in Trenton. The communication was ordered sent back.

The Committee on Streets reported adverse to the opening of Montgomery street, for the reason that more than one-half of the property owners, whose property would be assessed, had petitioned against it. The report was adopted.

The Committee on Fire Department submitted a report in reference to charges against Washington Hose Co. No. 4 for disorderly conduct.

The Committee reported that the charges were sustained, but that the Commissioners had not the power to suspend the entire company, but simply individual members. After some discussion the matter was tabled for the present.

A resolution was adopted directing the Corporation-Attorney to enforce the city ordinance restricting the rate of speed of locomotives within the city limits.

# MARINE AFFAIRS.

## NAVAL—THE PARAGUAY FLEET.

The chartered steamer Atlanta, Commander D. B. Ridgely, went into commission yesterday at noon. Her marines were marched on board at 2 o'clock, and the complement of sailors will be filled up to-day. She is to accompany the Caledonia to Venezuela with Gen. Paez, and after landing him both vessels are to steam at once for Buenos Ayres. They are not even to touch at Rio except it should be absolutely necessary for them to do so. Mails for the Central American, the Brazil and Paraguay squadrons will be forwarded. Annexed is a correct list of the Atlanta's officers.

Commander D. B. Ridgely; Lieutenants, John Downes, George B. Bien, J. R. Eggleston, H. M. Garland; Passed Assistant Surgeon, J. M. Brown; Second Assistant Engineer, Thomas J. Jones; Third Assistant Engineers, W. S. Thompson, E. B. Latch, W. H. Glading.

The Atlanta carries two large nine-inch guns, twelve officers, fourteen marines, and about one hundred sailors. The vessels of the Paraguay Expedition are at this date as follows:

| *Sailed from.* | *Arrived at.* |
|---|---|
| Sabine, New-York | Bermuda (dismasted). |
| Relief, New-York | Not heard from. |
| Release, New-York | Not heard from. |
| Harriet Lane, New-York | Barbadoes. |
| Supply, New-York | Not heard from. |
| Fulton, Norfolk | Barbadoes. |
| Water Witch, Norfolk | Barbadoes. |
| Southern Star, Norfolk | (Probably) Barbadoes. |
| Preble, Norfolk | Not heard from. |
| Dolphin, Boston | Not heard from. |
| Bainbridge, Porto Praya | Not heard from. |
| Store ship, Porto Praya | Not heard from. |
| *To Sail.* | *When.* |
| Caledonia, New-York | 29th. |
| Atlanta, New-York | 29th. |
| Westernport, New-York | To-day. |
| Memphis, New-York | About 10th December. |
| Canada, New-York | About next March. |
| America, New-York | About next March. |
| Metacomet, Philadelphia | Not known. |
| M. W. Chapin, Philadelphia | Not known. |

### THE SHIP GENTOO.

The ship Gentoo, bound to Boston, put into this port yesterday in distress.

*The New-York News* says its party in the western part of the State were unlucky in the names of their Congressional candidates. Look at the list! There were Mr. Trimmer, Mr. Skinner, Mr. Hatch, Mr. Jenks and Mr. Trott. Who *could* have expected to succeed with such unlucky nomenclatures? Whether Mr. Trott made anything of a run, we have not yet learned. Hatch is put back into his shell; Skinner has been literally flayed alive by the enemy. Trimmer could not trim sail well enough to get through the breakers. All lost! Don't ask "What's in a name?" Could Jenks "smell as sweet" as jessamine? [Louisville Journal.

B. I. Tilley is our agent in Newport, R. I., for the sale of The Tribune.