THE WHISKY FRAUDS.

REPORT OF THE HOUSE COMMITTEE OF INVESTIGATION.

BY TELEGRAPH TO THE TRIBUNE.

WASHINGTON, Feb. 25.—Representative Darling to-day made the following report:

The House of Representatives, on the fourth day of December last, adopted the following resolution:

Whereas, It is publicly alleged that great frauds are daily practiced in the payment and collection of the Internal Revenue on distilled spirits, tobacco and cigars, involving the integrity and fidelity of the revenue officers of the Government; therefore,

Resolved, That a Select Committee of five be appointed to investigate and report to this House the facts as to any frauds or evasions in the payment of Internal Revenue duties, and as to the terms of compromise or settlement in any case of underpayment or alleged fraud of any parties concerned in the manufacture of distilled spirits, tobacco and cigars, and of any Inspectors or other Internal Revenue officer who may have had any connection, official or otherwise, therewith, with power to send for persons and papers.

The Select Committee raised under the above recited resolution report:

The Committee was appointed on the 10th of December, and entered upon their duties immediately. They proceeded to New-York City, commenced the examination of witnesses on the 17th of December, and continued their investigations in that city and Philadelphia until the 17th of January, with the exception of a brief intermission during the holidays. They then returned to Washington and continued the examination of witnesses until the 1st of February, when the testimony was finally closed.

In consequence of the limited duration of the present session of Congress, they have confined their investigations to the cities of New-York, Philadelpia, and Brooklyn, and in these cities time would not permit them to make such thorough and careful inquiry as the importance of the subject demands. The accompanying evidence is presented as a part of this report.

Much of it doubtless lacks point and pertinency—defects necessarily incident to the character of the subject matter for investigation—an investigation in which interested parties and unwilling witnesses were to be examined, and whose statements in some instances were useful only so far as they could aid in directing attention to more important sources of testimony.

Notwithstanding the incompleteness of the investigation, enough has been elicited to satisfy your Committee that in the manufacture and sale of tobacco, cigars, and spirits, and especially the latter, the most stupendous frauds are practiced against the Government in the collection of the revenue.

Indeed, it is believed that at least seven-eighths of the entire amount of spirits manufactured under the present law have escaped taxation. Your committee feel warranted in the assertion that few, if any, of the large distilleries in the United States, now in operation, are doing a legitimate business. The conclusion, though sweeping and apparently censorious in its terms, seems justified by the facts. The tax on distilled spirits is two dollars per gallon, while that article is sold openly in market at prices ranging from one dollar and fifty cents to one dollar and eighty cents per gallon. It is impossible, therefore, to see how whisky, the first cost of which is from thirty to forty cents and the tax upon which is two dollars, can be manufactured and sold for the prices above named, they, providing the tax has been paid, constituting only about two-thirds of the actual cost. These facts are appalling, and they excite apprehension, as well in reference to the morals of the people as in regard to their bearing upon the public treasury, and if the present condition of affairs is to be continued, that which has been regarded as one of the principal sources of internal revenue may now be deemed substantially exhausted.

The evidence herewith reported, containing voluminous statements of manufacturers and dealers, as well as the opinions and suggestions of experts, detectives and other officers of internal revenue, will show the practical workings and many of the defects in the laws for the collection of taxes on distilled spirits, and will, therefore, supersede the necessity of an elaborate report in detail, but some conclusions have been arrived at in the minds of your committee, resulting from their examinations, which they desire to suggest for the consideration of the House.

The tax itself is very onerous, and offers great temptations for the evasion of its payment. The import is now at least 500 per cent ad valorem. Too many of our people do not regard it as a crime to avoid taxation, and hence the temptations to defraud the Government, in view of large gains, too frequently become irresistible. Whatever view we may take of the wisdom of the step by which the tax was raised to its present rate, we can see that there are objections to reducing it at the present time, one of which is that there are spirits on hand alleged to have paid an import duty, and yet perhaps this difficulty is more specious that real, because it is evident that a large portion of it has virtually paid no tax, and the holders would suffer but little by a reduction in the price.

The laws have been brought into contempt because they have not been rigidly enforced in the prosecution of cases of detected frauds. Among all the seizures and prosecutions in the cities of New-York, Philadelphia and Brooklyn, and they have been numerous, your committee cannot ascertain that a single one has been pursued to the extreme limit provided by law. It is true that property has been confiscated and penalties have been collected, but not a single man has felt the utmost rigor of the law. That part of your statute which makes it infamous to cheat the Government, and awards imprisonment, has remained a dead letter. Even in case of forfeiture and sale of property by order of the court for illegal practices, the same has in many instances been appraised at much less than its actual value, bid in by the violator of the law, and again used for defrauding the Government.

Your committee also suggest for the consideration of the House, whether or not it is wise to continue in the Treasury Department the power to compromise and settle cases of seizure for violations of the law. It is obviously difficult, if not quite impossible, for the Secretary of the Treasury or the Commissioner of Internal Revenue to acquire sufficient knowledge of real facts in any given case to make a proper determination and final disposition of it.

In most instances he must rely upon *ex parte* statements, and depending very much for his information upon the opinions and recommendations of collectors, assessors, and inspectors, to say nothing of the influence created by the importunities of the culprit and his personal and political friends, he is liable to be deceived by the statement of interested persons. Why should not these offenses be disposed of by the same rules that are applicable to other violations of the laws of the land? The courts open to the observation of the public, in which cases are prosecuted by public officers, and evidence is received according to the rules of law, subject to the test of cross-examination, and liable to rebuttal, would be much more likely to administer substantial justice, would secure a greater degree of public confidence, and would be far more effective in holding a rod of terror over the heads of evil doers.

Under the present system the illicit distiller goes to work, not without deliberate calculation. He looks over the whole ground and weighs the probabilities. The chances are, nine out of ten, perhaps 19 out of 20, that he is not disturbed or called to an account at all. If unfortunately he is detected and seized, what is the consequence? Certainly nothing very alarming. He sees no imprisonment, no very rigorous prosecution before him. He has manufactured and disposed of say 5,000 barrels, upon which he has paid no tax. He is seized with 50 barrels on hand. The case goes to Washington, and is compromised by the payment of the taxes on the 50 barrels, with or without the penalty, as the case may be. In the case supposed, estimating the article at $1 50, though he has lost the 50 barrels, he has put into his pocket $150,000.

Your committee also suggest that the present bonded warehouse system needs careful revision and radical alteration. It would appear from the evidence that to this system is due a very large portion of the fraud by which spirits escape the payment of tax. It is a source of corruption to both officer and manufacturer. Spirits are taken out of the bonded warehouse and others made to supply their places. Spirits are transported from one district to another, until a pliant officer is found. Barrels are fraudulently branded "tax paid," by the connivance of the officer; and sometimes forged stencil plates are used. Barrels are relieved of their contents, and then replenished with water. On the subject of bonded warehouses, the following extract from the suggestion of Mr. J. C. Horton, will be found pertinent and instructive:

"The following will illustrate how readily a fraud can be committed through this medium. Suppose a distiller in the West desires to send 4,000 barrels of whisky to this (New-York) city; he has only to give the collector of his district a transportation bond, say for 1,000 barrels. Upon this a permit to ship 1,000 barrels is granted. Now, under this permit he will ship four lots of 1,000 barrels each, each lot corresponding in marks, numbers, &c. One lot he will ship via Baltimore, one via Philadelphia, one lot via Erie Railroad, and the other via New-York Central Railroad. The four lots are by these means kept separate, and in the event of the seizure of either lot the production of the permit will at once insure its release unless the several corresponding lots could be traced, which would be purely accidental, they being hundreds of miles apart. This, however, is but one way to perpetrate fraud through this medium. After whisky has been placed in bond it may be withdrawn for redistillation, rectification, for change of package, for export or transshipment, and, under these various pretenses, thousands of barrels are covered up and lost sight of."

Similar practices spring up under permits for exportation. From information derived from the Treasury Department, it appears that of the 14,044,000 gallons of spirits "on hand and removed on bond" there were on the 31st of December, 1866, 5,000,234 gallons unaccounted for, which should pay into the Treasury over $10,500,000. It is not alleged that the entire amount unaccounted for has been fraudulently disposed of, but it is fair to presume that a considerable portion of it has been on the market, and has contributed in no small degree to the reduction of the price of whisky to the rate of $1 50 per gallon.

Were we to adopt the suggestion heretofore made, viz.: to assess the tax upon the capacity of the still, of course we should be relieved of all the questions and difficulties that spring out of the bonded warehouse system, and the swarms of officers made necessary by that system; but if that system is to be continued, ought it not to be so modified as to dispense with all warehouses connected with distilleries, and to retain only general bonded warehouses, to be placed under the immediate control of the Collector? It has occurred to your committee that perhaps no whisky should be taken from the distillery, or from bond for redistillation or rectification, without prepayment of the tax, and it may well be doubted whether, in any case, it should be removed from the distillery before the government has received its revenue.

A reference to statistics will show that the policy of encouraging the manufacture of the article under consideration for exportation is entitled to small consideration. We have not the means of knowing precisely the extent of the manufacture of liquor last year. In 1860 the quantity manufactured was estimated at about 92,000,000 gallons. During the fiscal year ending June 30, 1865, the total amount of exports of distilled spirits made from grain, molasses, and all other materials was 2,606,079 gallons, less than 2½ per cent of the entire production, assuming the amount to be the same as that produced in 1860. This statement of course gives the apparent amount of exportation, but how many of the barrels purporting to contain whisky had been relieved of their contents and replenished with water before they were put on shipboard does not appear.

Your Committee cannot too forcibly condemn that part of the law which authorizes the appointment of inspectors of distilleries to be paid by the distiller. It practically makes the inspector the servant of the distiller. It would be safer for the Government to rely entirely upon the conscience of the manufacturer for a return of the amount of his production. In that case he might feel that confidence was reposed in his integrity, and that his honor was involved. But when the Government appoints an agent to look after its interests, though the agent is in the pay of the distiller, the manufacturer naturally comes to the conclusion that the Government relies upon its own servant, and that each party must look after his own interest. From the evidence touching this feature of the Revenue system, from personal observation by coming in contact with many such inspectors, your Committee have come to the conclusion that it is not an extravagant expression to say that the plan of appointing inspectors of distilleries to be paid by distillers is simply the institution of a force. In many instances the entire value of the whisky returned, exclusive of the tax, does not equal the pay of the Inspector; and in some cases the whisky so returned, with the tax paid, is not sufficient to discharge the claim of the Inspector for his services. Inspectors are not generally a superior class of men, nor are they always distinguished for intelligence, character or social position. They are, some of them, appointed at the instance of the distiller, and not unfrequently they regard themselves as employés of the distiller rather than of the Government. Some facts may be stated indicating that frauds must have been perpetrated to a large extent with the connivance of Inspectors. The capacity of 171 distilleries licensed since Sept. 1, 1866, in First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Thirty-second Districts of State of New-York, as returned to the Committee by the Assessors of the several Districts, amounts to 48,956 gallons. By capacity is understood the quantity with which the still may be charged at a single time. Sixteen charges may be run off in 24 hours. Were these stills kept constantly running three months, estimating 24 days to the month, they would produce 8,743,680 gallons, and revenue to the amount of $17,487,360. It will be observed that this statement includes no part of the manufactures of the numerous distilleries operating in the same districts without license. Yet the amount of tax paid by those distilleries in three months ending November 30, 1866, was $294,641 60. Now it is not pretended that those distilleries have been run up to their full capacity, though there has been lately considerable activity in that branch of manufacture. It is known that there were in bonded warehouse from all sources December 31, 1866, 8,798,066 gallons, and 5,205,595 gallons, made in different parts of the country, have been "removed in bond" and remain unaccounted for. These facts are stated without an attempt to give an approximate amount of the spirits manufactured in the districts referred to, but the above figures are sufficient to show that but a small amount of the whisky manufactured in New-York has been accounted for, and they impress us with the conviction that the revenues of the country are in a dangerous condition when they are confided to the keeping and guardianship of inspectors of distilleries in the pay of the manufacturers.

It is suggested, also, as a question worthy of serious consideration whether the practice of paying moieties to the informers is conducive to good morals, the public interest, and the due execution of the law. We are aware of the argument that the hope of reward stimulates watchfulness and the detection of illicit transactions. While the force of this argument is admitted, it is a proper subject of inquiry whether the practice is not attended by evils sufficient to countervail all its benefits. It creates a system of interested hostile espionage seriously annoying to the business man. It holds out to the worthless informer an inducement to perjury. It becomes the means of leving blackmail; and in numerous cases of detection of actual violations of the law, the spy deems it more for his interest to settle with the manufacturer than to take him into Court or turn him over to the Department. And this objection applies as well to the officer of the revenue as to the private individual. It is a temptation to the officer in more ways than one. There is an inducement to look to his own interest rather than to that of the Government. The manufacturer is not unfrequently a better paymaster than the Government, and it can hardly be doubted in view of the testimony, that, in some instance, your revenue officers have decoyed the manufacturer into a breach of the law, with a view to seizures and moieties. Your committee submit that with proper modifications of the law, with judicious care in the selection of honest, capable officers, and with the aid that would be derived from honest manufacturers—when the law shall have been so enforced that honest men can engage in business—the revenue can be collected without the demoralizing practice of giving moieties to reckless, worthless, and infamous characters in the capacity of informers. But it is believed that a modification of the law, so as to lay the tax on distilled spirits on the capacity of the distillery, would be found at once simple, easy, and effective, and that it would operate greatly to reduce the expense of collection; and until some automatic contrivance can be invented to indicate unerringly the exact quantity of proof spirit produced, we are of the opinion that the tax should be laid upon the capacity of the distillery as above suggested. An expert could readily determine very nearly the actual capacity; and adopting this plan, you secure the collection of the revenue, and remove all the various temptations and opportunities for fraud to which allusion has already been made, and which must ever exist under a system so complicated as the present. Some reasonable deduction might be made from the actual ascertained capacity to provide for contingencies, stoppage, etc. If it be said that by such deduction some spirits might escape tax, it is answered that it would operate only as a reduction of the tax, now confessedly large, but it would preclude the illicit distillation, and would operate equally upon all engaged in the business.

The evidence taken by the Committee touching the manufacture and sale of tobacco and cigars is not voluminous; but it shows much evasion of the tax on cigars. It appears that the authorized practice of stamping cigars without the actual payment of the tax, is a means of fraud; and it is believed that the evil might be remedied by requiring stamps representing the actual amount of tax to be procured from the Treasury and placed on the cigars, before they are subject to removal or sale.

The near approach of the dissolution of the Thirty-ninth Congress does not warrant your Committee in attempting to embody their conclusions in the form of a bill, nor would it be of practical use to do so, as it is quite too late to hope for such radical legislation in reference to the revenue system as is deemed necessary; but it is hoped that a perusal of the testimony herewith reported may lead to such changes in the laws as will insure to the Government the collection of its revenue.

In closing this report your committee feel impelled to add, that while they do not doubt that there may be some meritorious revenue officers in New-York, Philadelphia, and Brooklyn, nevertheless the frauds in those cities are so universal and gigantic, the morals of manufacturers have become so tainted, confidence in the local officers of internal revenue has become so shaken, that it is believed that the laws will never be efficiently executed until there shall have been a reorganization of the revenue force in these cities. Evidence has been taken, tending in some degree to implicate certain officers of the government in improper practices. Officers have also been heard in their defense. Your committee refer to the testimony touching such cases, without comment or expression of opinion. But waiving all charges against particular individuals, it is manifest that frauds cannot be practiced so generally and so openly without either connivance or gross inefficiency on the part of a large number of the revenue officers.

WM. A. DARLING, F. C. BEAMAN,
LEONARD MYERS, B. EGGLESTON.

FUNERAL OF DANIEL DEVLIN.

The funeral ceremonies over the remains of the late Daniel Devlin, City Chamberlain, were celebrated at the Church of the Jesuits, in West Sixteenth-st., yesterday morning, at 10 o'clock. Mr. Devlin was universally known and respected in all ranks of society, and long before the solemn ceremonies commenced the church was filled, with the exception of a space left vacant near the high altar for the accommodation of the pall-bearers and friends of the family. At a few minutes before 10 o'clock, the hearse containing the remains of the deceased reached the church from the residence of Mr. Thos. O'Connor, nephew of Mr. Devlin, and were received at the portal of the sacred edifice by the officiating clergyman, the Rev. Father Durbresse and his assistants, the Rev. Father Thiery, the Rev. Father Beaudreau, and Father McHenry, who acted as master of ceremonies. The 50th Psalm, *Miserere mei ad te domine*, was chanted as the remains were borne up the central aisle by the officiating priests, after which it was placed upon a catafalque, ornamented with black velvet, trimmed with silver lace, and surrounded with lofty candelabra. A number of gorgeously-wrought crosses, and a large harp of flowers, made from natural japonicas and camellias, were placed upon the coffin. The interior of the edifice presented a very solemn spectacle—the altar, galleries, pulpit, and the huge altar piece representing the Apostle of the Indies ascending to heaven, being hung with sable cloth trimmed with white silver lace. The bench, bar, the walks of mercantile life, and journalism were well represented at the funeral, owing to the wide acquaintance of the deceased. The Boards of Aldermen and Councilmen were present through the medium of special committees, and the clerks and other employés of the house of Devlin & Co. were in the Church, wearing badges of black crape on their left arm. The Mass sung was Cherubini's in C minor, with Mad. De Lussan and Mad. Bunlich as sopranos, F. Vaelden tenor, M. Loshst basso, and an orchestral force of 20 performers, assisted by Prof. Dessane, the organist of the Church. Archbishop McCloskey, Bishop McLoughlin of Brooklyn, Bishop Devans of Van Couver's Island, and a number of distinguished Catholic clergymen were present inside the sanctuary. After the celebration of the Mass Archbishop McCloskey ascended the pulpit and preached an eloquent eulogism on the virtues and charities of the deceased. His grace alluded to the charitable donations of the deceased, his munificence in all good works, and his upright and sterling consistency as a citizen and man. After the sermon the *Libera Domine* was chanted, and the pall-bearers slowly followed his corpse to the hearse, down the main aisle, in the following order, while the litany for the dead was being chanted by the officiating priests, for the repose of the soul departed:

John T. Hoffman,	H. F. Spaulding,
S. D. Ives,	Eugene Kelly,
Walter Magee,	Hy L. Hoguet,
Andrew Carrigan,	Edward C. Donnelly,
F. A. Palmer,	Thurlow Weed,
James T. Brady,	W. S. Cauldwell,
J. B. Nicholson,	John Bryan,
John Devlin,	George G. Barnard.

The remains were then removed for temporary interment to the vaults of St. Patrick's Church, preparatory to being finally deposited in Calvary Cemetery.

BROOKLYN NEWS.

THE COMMON COUNCIL.—The Brooklyn Board of Aldermen held a regular meeting at their rooms in the City Hall yesterday afternoon, President Fisher in the Chair. A report was received from the Law Committee recommending the appointment of an extra Committee of three to proceed to Albany and examine all bills affecting Brooklyn. The report was adopted and $250 appropriated to defray expenses.

A report was also received and adopted, from the same Committee, in favor of paying a judgment against the city of $1,439 02, for damages done to the property of Mr. James P. Richardson by the mob during the draft riots.

The Street Commissioner reported in favor of opening the following streets: Prince to Concord; Sixth-ave., from Tenth to Sixteenth-sts.; Stockton-st. to Throop-ave. Adopted.

James T. Leary was awarded the contract for bridging Bushwick Creek and improving Union-ave. and Lorimer-st. for the sum of $9,344.

Proposals were submitted by the different gas-light companies for lighting and repairing the street-lamps during the ensuing year, as follows: Citizens' Gas Light Company, each lamp 3,758 hours, 4-feet burners, 15,032 feet per year, $4,886; lighting and extinguishing, 2 cents each, $730; repairs, $1,600. Brooklyn City Gas Light Company, each lamp 3,758 hours, 4-feet burners, 15,032 feet of gas at $3 25 per 1,000 feet, $4,886; lighting, &c., 2 cents each; repairs, $2,700. Greenpoint Gas Light Company, each lamp 3,758 hours, 4 feet each, 15,032 cubic feet at $3 50 per 1,000 feet, $5,261; lighting, &c., 2 cents each, $730; repairs, $370. Referred to the Committee on Lamps and Gas.

The Board adjourned for one week.

COURT CALENDAR.—The following is the calendar of the Brooklyn City Court for the March term: Jury, 1st week; Equity, 4th week; Motion days, Saturdays throughout the term.

THE EXCISE LAW.—Peter Quinn, corner of Jay and Water-sts., and A. J. Wolfe of No. 136 Plymouth-st., were brought before Judge Cornwell, Brooklyn, yesterday, and fined $30 each for violating the Excise Law, by opening their places of business on Sunday. Edward Mallory and Patrick Douglas were also fined in the same amount, for keeping open after 12 o'clock Saturday evening.

CIVIL COURTS.

THE FERNANDO WOOD LEASE.

As Mr. Williams was unable by reason of an interruption to complete his argument on Friday, he obtained leave to hand up his brief on Monday.

The following is a copy:

SUPREME COURT
The People on the relation of Fernando Wood agt. Richard B. Connolly, Controller, &c., &c.
RESPONDENT'S POINTS.

The relator appears upon the filing of the return to the alternative writ and demurs *ore tenus* to the same. Thereby in legal effect saying, "I admit all you allege in your return to be true; and I further admit that all the allegations contained in the writ which you deny, to be false, yet I am by law entitled to the peremptory writ." Upon this, as the basis of the argument, it is submitted that the relator is *not* entitled to the peremptory writ for the following reasons:

First: It is alleged in the return, and therefore stands as the admitted fact, that a writ of injunction was sued out of this Court in an action wherein Christopher Pullman, "a member of the Common Council of the City of New-York," was plaintiff, and the Mayor, Aldermen and Commonalty of the City of New-York, and Matthew T. Brennan, Controller of said city, were defendants, strictly enjoining and forbidding the said Controller and his *successor and successors* in office from executing the lease in question or paying the rent here demanded. It is argued in answer to this that Pullman's term of office has expired, and therefore the suit has abated and therefore the injunction is dissolved. To this it is answered: The return alleges that the said writ still remains in full force and virtue. This allegation is qualified by the words "so far as the respondent has any knowledge." But this does not impair the effect of the allegation as a pleading, for it is always competent to qualify an allegation by reference to the character of the knowledge of the party pleading. This allegation then for the purpose of this demurrer is conclusive upon the fact that the writ is still in full force and virtue. 2. On what authority is it claimed that the expiration of Pullman's term of office has the effect to abate the suit? Certainly not the statute which confers on him the right to sue, for it is not to be presumed that the Legislature was trifling with the party upon whom they conferred this right by saying, "It is true that an action brought in the City of New-York cannot in the due course of business be brought to trial under about two years after it is commenced, nor can it, if appealed, be got through the General Term and reached for argument in the Court of Appeals in less than five years more. Still, a Common Councilman, whose term of service is but for one year, who avails himself of the right here conferred, must understand that, in case he brings suit, and his antagonist manages to keep it in Court beyond his period of office, all that he has done in the suit must go for nothing." But it is not necessary to state it thus. It is a familiar rule of interpretation that where any right is given by statute all that is necessary to render that right effectual is also by necessary implication conferred therewith. The right to commence a suit without a right to prosecute it to the end would be the most unseemly mockery. But on principle it might as well be argued that a suit brought by the Mayor, Aldermen, and Commonalty of the City of New-York, would abate by the expiration of the term of office of the Mayor or Aldermen. But were it otherwise, the suit in which the injunction was issued is an *equity suit*—an injunction issues in no other. It is of very familiar knowledge that what would abate and leave entirely dead a suit at law will in equity suits have only the effect of suspending the proceedings, which a bill of revivor under the old practice, and perhaps merely a motion under the new, will remove and permit the parties to proceed as before. [Mdf. Eq. Pl. (by Jeremy), 57 Stoup Eq. Pl., sec. 354.] It never was claimed, or, as far as is known, suggested, that even the natural death of a plaintiff in an equity suit would have the effect to dissolve an injunction, nor would the fact of such death be for a moment listened to by a court upon a motion for an attachment as for a contempt for disobeying an injunction. [Eden on Injunction, p. 158.]

Second: The return sets forth the pending of an action in this Court in Equity, brought by the Corporation of the City of New-York against him as Controller, to set aside the resolution in equestion and declare it null and void, and to perpetually restrain and enjoin the respondent from executing the lease or the payment of any moneys as rent for the premises in question, on the ground that the same was frudulently procured and approved. If anything be settled, it is settled past dispute that when a court of competent jurisdiction has got jurisdiction of any matter of dispute, such jurisdiction is *exclusive* as against all cognizance of such matter by any court whatever, in any suit or proceedings which may be thereafter instituted. To this principle it is believed no single exception can be found in the annals of jurisprudence. So universal is it that it prevails not only as a principle of law, but it is adopted by the Supreme Court of the United States as a principle *of comity*. In the case of Taylor agt. Carryl (20 How, 583), the Sheriff had seized a vessel under an attachment issued out of a State Court; after that a Marshal seized the same vessel under an attachment issued out of a United States Court. The Supreme Court held that, as the State Court had got jurisdiction first, the United States Courts ought not to attempt to get jurisdiction afterward, as it would lead to a conflict of jurisdictions; and so set aside the arrest made by the Marshal as void. But a disregard to this rule of jurisprudence would in every imaginable case be most injurious as leading not only to a conflict of jurisdiction, but to the most dire and inextricable confusion. No case will illustrate this, better than the present. The Corporation files a bill to set aside what is claimed to be a contract for fraud. Pending the action, the defendant, upon a notice of eight days, brings the complainant before a Judge at Chambers demanding an execution of the contract and payment thereunder. The relief the Corporation ask is attainable *only* in a suit in equity. It is a bill filed to set aside a pretended contract for fraud. It may be deprived of a trial in that Court by the summary action of his antagonist, and confined to the scanty relief or no relief attainable upon the return of an alternative writ of mandamus. Suppose the relief here asked by the relator were to be granted, he may plead these proceedings *puis darien continuance* in that action as a flat bar and thus deprive the corporation of a trial in that Court where alone such wrongs as it complains of are cognizable and returnable. The human mind shrinks from such a spectacle of perverted justice. That the doctrine here contended for is applicable as well in a case of an alternative mandamus as in other actions or proceedings is settled in the case of Rex agt. Dr. Hay, 4 Burr, 2,295. The objections that the complaint is not sworn; that no one dare swear to it—that the Common Council will not be presumed to have authorized the bringing of a suit in which such charges of bribery and corruption are made against themselves, and hence that the Corporation Counsel brought the suit without authority are objections not fit to be made here. This is an argument upon a demurrer, all the allegations in the return are admitted by the demurrer, and that alleges that the action was brought by the corporation and that it is still pending. If it could be made to appear here that the complaint was not sworn, is there any law requiring a complaint to be sworn? And as to an authorization of the suit by the Common Council, does it or could it be made to appear on the argument of this demurrer that they did not authorize it? It is brought by the head of the Law Department of the city, who is charged with all the legal duties that appertain to the corporation, and, of necessity, not only at liberty, but bound to act in his own discretion in all such matters. He requires no more to be instructed in the law business—the bringing and defending of suits—by the Common Council, than the Common Council requires to be instructed by him in matters coming exclusively within the range of its duties. But were it otherwise—had that suit been brought by a non-official attorney, his right to bring it could be questioned by no one but his client, even in case it came directly in issue, unless it should be affirmatively shown that he was pecuniarily irresponsible. To what pass must counsel be driven to raise a question of that kind here collaterally on the argument of a demurrer, when no such fact in any wise appears. 6 John Rep., 296; 9 Page, 496.

Third: There being no statute or ordinance imposing upon the Controller the duty of *renewing leases*, or any similar duty, he could not be compelled, even at the suit of the Common Council, or by the Corporation itself, to do the acts by the alternative writ required, much less can he be compelled to do so by an individual or mere stranger, to whom he owes no duty or allegiance whatever. That no such duty is imposed upon the respondent by law or ordinance appears from the fact that no such law or ordinance is cited by the counsel for the relator. If there be such law or ordinance existing, let it be produced. We aver that none can be found. The only allusions to the subject that in any way bear upon it are, 1st, section 10, chapter 3 of the Revised Ordinances, which is as follows: "He" (the Controller) "shall cause all grants, *leases*, and counterparts of leases, or deeds *executed by the corporation* to be recorded in the proper books to be kept in his office." Thereby clearly implying that the duty of *executing* rests with the corporation or elsewhere than with himself. His duty in reference to leases is confined to the recording them in proper books to be kept in his office. Again, Section 36 of the act of 1857 provides that "the Clerk of the Common Council shall keep the seals of the city and his signature shall be necessary to all *leases*, grants, and other documents, as under existing laws." From which it appears that the Controller has no power to obey the mandate of the alternative writ, namely, to "execute and deliver" the lease demanded. Thus a portion at least of such duty is by this express statute confided to another functionary. If the Controller is bound by law, by any general principle of law, to do the work assigned him by the resolution in question, then by the same general principle of law, he is bound to do whatever the Common Council may require him to do. No one will pretend that the Common Council has any such power over any other citizen. And if any such exists over the Controller, it should be most clearly shown. None is shown, and it cannot be pretended that any such exists. But were it otherwise, and were it true that the respondent is bound to do every and all things which the Common Council by resolution direct him to do, yet how could the relator take advantage of a duty not enjoined by law, not due to him, but simply existing between the Common Council on the one side and the respondent on the other? If such a duty exists as between the present Controller and the present Board of the Common Council, how can it be pretended that the present Controller owes any such duty to a former board, now extinct? Is there anything to show that the present board desire the Controller to execute such a lease? This question was raised in the case of People agt. Breman, 30 Bard., 522, and it was then claimed that the presumption was that the proceeding was with the consent and sanction of the corporation, and it was virtually conceded if anything to the contrary appeared it would be fatal to the application. In this case we have the facts in the writ that the late Controller—to whom alone this resolution refers, for no allusion is made to his successor in office—absolutely *refused* to execute such lease. We have the further facts, in the return, that the Corporation deny that rent is due under the resolution; that they refuse to pay such rent, that they have filed a bill to have the resolution set aside and declared void for fraud, and to enjoin and forever prevent the execution of the lease. We have the further fact that the Corporation deny that the occupation by the Corporation Attorney and the Public Administrator is an occupation under the resolution, and claim it is a holding over under the lease first in the writ referred to. It may be asked, What other possible way could the corporation show its dissent from the proceedings or its repudiation of this pretended letting? But it would be enough to say on this head that there is nothing in the resolution requiring the Controller to "*execute and deliver*" a lease—it simply requires him to "*renew*."

Fourth: The contract of lease is incomplete—something must be done before it is perfect—and so long as that is the case a mandamus will not lie to complete or execute it, or pay out moneys under the terms of it. The proposition of law here stated was conceded on the argument, and the authorities to sustain it are abundant. The only question under this head is—is the contract of lease incomplete—does something remain to be done before it is perfect. 1. The return—which, it will be steadily borne in mind, stands admitted by the demurer to be true and which in every respect must be deemed and taken to be facts upon which this case must be decided—alleges "that the matters and things set forth in the said writ from which it is claimed that the contract of lease was perfected are in fact but a part of certain negotiations between the relator and divers officers of the corporation which had theretofore begun and were carried on for a long time thereafter, and that the same did not result in a settlement of the terms or the conclusion of any contract to lease the said premises. If then this allegation standing as the truth of record does not demonstrate that the contract of lease was incomplete and bring the case of the respondent within the conceded principle of law above laid down, then there is no language by which that could be done. Reference is here clearly made to facts outside of the record, by which the truth of the allegation could be maintained, if indeed issue had been taken upon it instead of admitting it to be true by demurrer. 2. The resolution in its very terms shows that no contract was made, but that further action was contemplated on the part of the Corporation or its officers, by which the completion of the contract was contemplated. The Controller is directed to renew the lease, which implies a making of a new lease—the rate of rent, and the term of years was given—nothing more. Were the various other terms and conditions of the former lease to be included in the new one? The resolution is silent upon this subject, but the writ shows that they are included in the leases tendered. The language of the writ is "that he caused leases to be prepared *in conformity with the then existing leases* except as to the amount of rent reserved and the term of the duration." Did the Common Council assent to such *conformity*. The resolution does not assent to it. Did the Common Council consent to, or direct the execution of *Leases*? The resolution speaks only of a *Lease*. Was the matter of these leases and this conformity and the number of leases left to the discretion of the Controller by the Common Council. If so, it is open to another objection. If anything is left open to the discretion of an officer, a mandamus will not lie. In the case of the United States agt. Guthrie, 17 How., the Supreme Court held that "a mandamus can only issue in cases where the act was merely ministerial, and with regard to which nothing like judgment or discretion in the performance of his duty is left to the officer." It is not only clear by the very terms of the resolution that the Common Council did not undertake to make the contract of lease, but only to authorize it, but the very language of the city charter puts this construction upon it. Section 28 provides that "all contracts to be made, and let by *the authority* of the Common Council, &c., shall be made by the appropriate heads of departments, &c." It is very clear that this authority should have been given to the head of the Law Department and not to the Controller, and that such heads of Department have a most ample discretion cannot be doubted; and to say that to authorize and direct a thing to be done is doing it, to authorize the renewal of a lease is to actually renew it, is not claimed even by the relator in his writ, for he sets forth that he in writing accepted the said proposal for the renewal of the said lease, &c., "and that the Controller refused to execute the same." It has been repeatedly held that contracts of this kind are inchoate and that a mandamus would not issue to compel an officer to execute them.—People agt. Canal Board, 3 Barb. 432, in which Mr. Justice Cady cites and reviews a large number of cases.

Fifth: If the contract be complete and not inchoate and incomplete, the relator does not need the aid of a writ of mandamus, for he has his action at law for the rent of the premises. If there be any other remedy a mandamus will not be granted. [2 Cow., 444; 18 Wend., 575; 12 J. R., 414; 1 Cow., 423; 21 Wend., 25; 6 Hill, 243, 244; 2 Hill, 45; 1 Wend., 318; 5 Hill, 616; 629.] 2. If the contract be inchoate and not complete and perfect, a mandamus will not lie to compel an officer to complete it. See cases above cited, and also 3 Col, R. 167, 1 Clarke (Iowa) 179, 11 How (U.S.) 272. 3. If there be a perfect and complete contract of lease, an action will lie for the rent, and there is no reason why a mandamus should not issue at the suit of any other person against any other corporation or person for the payment of any other claim, as well as for the payment of this claim for rent of the premises in question.

Sixth: The statute provides as follows: "All moneys drawn from the City Treasury shall be upon vouchers for the expenditure thereof, examined and allowed by the the Auditor, and approved by the Controller and filed in his office." (Act of 1857, Sec. 22.) There is no pretense that any voucher for the expenditure now sought to be obtained by peremptory mandamus has ever been examined or allowed by the Auditor, nor that any such voucher has been approved by the Controller or filed in his office. The warrant now demanded cannot be drawn without clearly contravening the provisions of this statute. It may here be observed that, if any doubt could exist as to the drawing of a warrant by the Controller being an act upon which he has a discretion to be exercised, it would be put to test by this provision of the statute; for the words "approved by the Controller" clearly recognize his discretionary powers in the matter. It will not be contended by the counsel for the relator that an act concerning which the officer has a discretion can be compelled by mandamus. Again, the 15th Section of the third chapter of the Revised Ordinances provides as follows: "But no such warrant shall be drawn unless the sum specified therein is embraced in an appropriation previously made for that purpose by the Common Council." Before the warrant now demanded can be drawn by the Controller, the Common Council must have, by a vote of both of its branches appropriated the sum claimed to the purpose of the payment of the claim in question; or he will not only make himself personally liable for the amount so drawn, but incur the penalties of a misdemeanor for the act. The Court may be here reminded that if the relator fails upon any one branch of his claim in the alternate writ, he must fail in all. Hill. 50, 55; 18 How., 132. The reason of the rule is that the peremptory writ must follow the alternative writ, and it is not here, as was maintained at the argument, that the Code has obviated this objection, and allow the party to strike out and amend, as in other cases. The Code nowhere alludes to a writ of mandamus. It has repeatedly been held that it does not in any of its provisions enhance, regulate or refer to proceedings of that character. [16 How., 4; 19 Barb., 657; 7 How., 124.]

Seventh: Such portions of the writ as are not admitted by the return either expressly or tacitly, must be taken to be untrue, and for the purposes of this argument may be deemed to be stricken out. In the absence, then, of the allegations that may be deemed so stricken out, there is not enough upon the face of the writ to establish a claim to the peremptory writ aside even from all the affirmative matter set up in the return. It was claimed upon the argument that as the negative allegations were mere denials of knowledge, they did not have the effect to put the allegations of the writ in issue, and consequently such allegations must be taken to be admitted. To this it is replied: The claim in question is a claim not against the respondent but against the Corporation. Now, it ought not to be pretended that a Corporation admits an allegation simply because a party is able to select one of its officers who is not able to say upon his official oath that the allegation is untrue. If money is to be taken from the treasury of a corporation, it ought to be upon allegations that are true in point of fact, and not upon allegations of which one particular officer of the Corporation has no knowledge, and therefore is unable to deny. The present Controller has been in office only since the 8th of January last, and, of course, cannot know concerning the matters in controversy. The relator for some reason waited until the Controller, who was in office during the period in question, and, of course, did know concerning them, had passed out of office. So now he claims as the reward of his delay that the Corporation admit what the present Controller cannot deny. This is rather a questionable shape for a party to come into court in, and ask the benefit not of a writ of right but of a high prerogative writ, which is addressed to the judicial discretion of the Court, based upon a clear and unquestionable right for which there is no other adequate remedy known to the law. What the respondent is able to admit may be taken as true; but what he returns that he is unable to admit for want of knowledge concerning it cannot be taken to be true as against a corporation of which he is but an officer. A corporation is composed not merely of the officers that compose its organization, but of every voter and tax-payer who owe it allegiance, and when our antagonists, in high laudatory phrase, exculpate the official corps of the city from the blame of opposing this claim, and charge it upon the unhallowed interference of the Citizens' Association, and the menials whom the tax-payers from time to time employ to guard the treasury, and save them from the present onerous load of taxation, to say nothing of the crushing weight which seems impending, they forgot for whom a City Government is organized, and for whom it should exist, *or not exist at all*. Respectfully submitted,

I. T. WILLIAMS of Counsel.

UNITED STATES COMMISSIONER'S OFFICE—FEB. 25
Before Commissioner WHITE.

THE AUSTRIAN EXTRADITION CASE—A FURTHER POSTMENT.
In re the Extradition of Adolph William Schwartz.

This case was to have been resumed yesterday afternoon, but, the prisoner still continuing ill, the further examination was postponed until Wednesday next, at 1 o'clock p. m.

COURT NOTICE.

Yesterday was the last day of the Admiralty Term in the United States District Court. On Tuesday, March 5, the Jury Calendar will be called and cases assigned for the Term. The Jury will not be impanneled until Wednesday, the 13th of March.

SUPREME COURT—CIRCUIT—FEB. 25.—Before Mr. Justice E. D. SMITH.

VERDICT FOR DEFENDANT IN THE INDIAN AGENT CASE.
Henry W. De Puy agt. Oliver P. Hurford.

This case was on trial several days. The main facts have already appeared in our columns. On Friday last counsel finished summing up, and the Court charged the jury substantially that defendant had a right to write and send the two letters complained of as libelous; if, in doing so, he intended to make a true representation and to say what was for his interest, honestly and fairly, and if he made a mistake without malice, no harm was done by him that the law could take cognizance of. But, on the other hand, if he was aware that the statements in these letters in relation to the vouchers was false, then he had made a grave accusation against plaintiff, and had made it with malice. It was for the jury to determine from the evidence and the probabilities of the case whether the letters were written by defendant knowing them to be untrue, and for the malicious purpose of injuring plaintiff. If they came to the conclusion that they were, then plaintiff was entitled to vindictive damages. If they concluded they were not, then their verdict should be for defendant.

The jury brought in a sealed verdict yesterday morning for defendant.

Peter Y. Cutler for plaintiff; Mr. Fullerton and Benj. J. Kissam for defendant.

CHAMBERS—Before Mr. Justice LEONARD.

THE STATUS OF VIRGINIA—THE OLNEY CASE FURTHER ADJOURNED.
In re George Olney.

The further hearing of this case was again adjourned to Saturday. This adjournment being based on the ground that the Governor had expressed a wish to inquire further into the matter, and had stated that he would do so on Tuesday or Wednesday.

Mr. Dean asked, on behalf of the Captain, that he be allowed his liberty on parole, stating that he was sure though he had run away with a steamer, he would not run away with himself.

The Court declined to do so, but on the representations of the District-Attorney that they had no objection, admitted him to bail in $500.

COURT OF COMMON PLEAS—GENERAL TERM—FEB. 25.
Before Judges DALY, BRADY, and CARDOZO.

LIABILITY OF THE CITY FOR THE CONDITION OF ITS SIDEWALKS.
Emil Reinhardt agt. The Mayor, &c.

On the 23d of September, 1862, at about 7 o'clock p. m., while passing along Thompson-st., in the City of New-York, plaintiff stepped upon a grating in the sidewalk, covering a circular opening communicating with a vault in front of and attached to a house there situated. The grate turned up, and the plaintiff's leg slipped into the opening and he was severely injured. The grating was made of three iron rings and two cross-bars, of the same kind as many thousands of others now in use in the city, and, when properly fastened by a chain, was as safe as any other method of covering the vault-apertures. It was furnished with a chain, which, by the neglect of the persons occupying the house, was unfastened at the time of the accident. The grating was sufficiently large to cover the aperture, and the accident would not have happened if the chain had been fastened. There was no imperfection of the grating or chain, or insecurity in the method of fastening, which was apparent to a passer.

The plaintiff sued the city, and recovered in the Court below $1,000, and the defendant appealed from that decision. The following are the main points on which they appeal: In order to render the defendant liable in this action the plaintiff must establish either express notice to the defendant of the defective and insecure condition of the vault-covering, or that its defective condition was of such manifest character that it was negligence for the officer of the corporation not to have discovered it, and that it had existed so long that notice is presumed. The testimony fails to establish either of these points. The defendants having enacted an ordinance which, if complied with, precludes the possibility of an accident from insecure vault-coverings, have performed the duty devolved upon them in their legislative capacity to prevent by adequate laws such insecurity. The *executive duty* of enforcing those laws by inspection of the streets and reporting violations of the ordinance for prosecution is vested by law in another and independent body (the Metropolitan Police), who are not subject to the authority or control of defendants. Defendants, therefore, are not liable for the neglect of police officers to report such violation; nor can knowlege or notice of a defect in the street, caused by violation of their ordinance, be presumed until report thereof by a police officer is proven.

The Court reserved its decision.

Malcolm Campbell for plaintiff; David J. Dean for the city.

CHAMBERS.—Before CARDOZO, J.

Marsh agt. Galardan.—See opinion.
Imlay agt. Williams.—See opinion.

SUPERIOR COURT—SPECIAL TERM.—FEB. 25.—Before Justice MONELL.

DECISIONS.

Frederick G. Eldridge et al. agt. Robert Troost et al.—Extra allowance of $250 granted.

Before Justice JONES.

Clara W. Warren agt. The Western Transportation Company.—Motion denied.

Constantine Rosswog agt. James W. Seymour.—Motion granted for a commission without costs.

E. H. Lynch et al. agt. James H. Ehle.—Motion of discontinuance granted without costs.

Thomas Hogan agt. J. Miron Taylor. Stephen Wyckoff agt. The McClintock and Cornwall Petroleum Mining Co.—Motions granted.

James H. Whiting agt. Van Buren Ryerson.—Motion denied, with $10 costs, on the ground that the motion papers were not served within five days, pursuant to the said order.

Rosena Grayley agt. James Grayley.—Report of referee confirmed and judgment of divorce granted.

COURT CALENDAR—THIS DAY.

SUPREME COURT—GENERAL TERM.
Adjourned without day.

SUPREME COURT—CIRCUIT.
PART I.—No civil calendar. The Oyer and Terminer will be in session.
PART II.—Adjourned for the Term.
PART III.—Before Mr. Justice E. D. SMITH. Court opens at 10 a. m.

Nos.	Nos.
222—Banks agt. Baldwin.	247—Snediker agt. Lynch, Sheriff, &c.
525—Benton agt. Myers.	972—Schwartz agt. Claner.
1069—Post agt. Seaman.	245—Rosenthal agt. Lynch.
1148—De Witt agt. Sullivan.	395—Sherwood agt. Lane.
1156—Hera agt. Jackson.	1061—Hurley agt. McLelland.
293—Theile agt. Beraheimer.	612—Shepard agt. The American Bank Note Co.
1165—Wilcox agt. Turley.	1254—Outwell agt. Campbell.
685—Scheack agt. Bell.	204—Burnside agt. Brahder, jr.
2724—Sackett agt. Whitner.	1051—Griffith agt. Jacobi.
387—Freeman agt. The Second-ave. R. R. Co.	516—Rorke agt. Parker.

SUPREME COURT—SPECIAL TERM.
Adjourned for the Term.

SUPERIOR COURT—TRIAL TERM.
Adjourned for the Term.

SUPREME COURT—CHAMBERS.
Before Mr. Judge LEONARD. Court opens at 10 a. m. Call at 12 m.

Nos.	Nos.
43—Savage agt. Pike.	50—Packer agt. Mayer.
48—Conroy agt. Jugwell.	

Call No. 64—People ex rel. U. S. and Brazil S. S. Co. agt. Comm'r of Taxes.

MARINE COURT—TRIAL TERM.
Before Judge ALKER. Court opens at 10 a. m.

Nos.	Nos.
— Maxwell agt. Henry.	243—Mason agt. Savage.
228—Hardie agt. Livingston.	244—Hinckley agt. Wilson.
230—Hamilton agt. Blank.	246—Knoery agt. Boerible.
232—Knoop agt. Hone.	250—Pollock agt. Buchanan.
233—Davis agt. Lynde.	251—Edwards agt. Block.
236—Haelke agt. Hartman.	166—Hayes agt. Hess.
238—Wise agt. Hochtman.	257—Vejnerier agt. Smith.
239—Matthews agt. Murray.	258—Dunn agt. Tarbeck.
240—McGovern agt. Reppler.	261—Carpenter agt. Reilly.
241—Cockroft agt. Lockwood.	262—Rollins agt. Folk.

CRIMINAL COURTS.

OYER AND TERMINER—JUDGE INGRAHAM.

William McCormick pleaded guilty to manslaughter in the fourth degree, in stabbing Richard Pollard on the 26th of May, and causing his instantaneous death. Sentence was deferred until next Friday.

John J. Coyle, convicted of grand larceny, was brought up on remand. Sentenced to the State Prison for one year and six months.

To-day the case of John Kane, charged with setting fire to a house in Second-ave., and causing the loss of some lives, will be called for trial.

GENERAL SESSIONS—JUDGE RUSSEL.

In this court yesterday a number of prisoners were brought up on remand, and final disposition made of their cases.

Oscar Koch was tried on an indictment for robbery in the first degree. Wm. P. Hilliard, of No. 31 Park-row, was the complainant. It appeared from his testimony that he met one Mary Tressa, about 6 o'clock in the evening, near his place of business. At 9 o'clock he went back to her, and they had a drink together at his expense. Subsequently, he gave her money to purchase provisions for Sunday, and she left the room. She came back with one Maggie Smith in her company, and then prevented the complainant from leaving the room. While they were struggling Oscar Koch and George Miller came in armed with clubs and commenced beating him, and when he became unresisting they rifled his pockets of $2 20 in currency stamps and a pair of spectacles. The spectacles were found on Miller, and the pocket-book he saw Koch have. On cross-examination the witness testified that he was a married man, and aged 52 years. Maggie Smith, who was one of the prisoners in the case and was discharged by the Court last month, gave evidence for the defense. She testified that the complainant first struck Mary Tressa and herself before they attacked him. To the best of her knowledge, Koch was the person who struck the complainant with a club. The prisoner was found guilty of an assault with intent to commit robbery, and was sentenced to the State Prison for five years.

Mr. Gunning S. Bedford, jr., Assistant District-Attorney, acted as prosecuting officer.

The following is the calendar of cases for to-day: Joseph Dwight, Geo. Kelly, Virtue A. Hudson, Jesse S. Minely, David Miller, Chas. M. Rice, A. Stringer, Bridget McClure, Clark Allen, Jacob Levy, Martin Kurth, Robert S. Winter, Silas Yates, Thomas Roberts, Andrew Higgins, C. Mahoney, grand larceny; Jas. Trimble, burglary; Wm. R. Merwin, Wm. B. Putnam, misdemeanor.

TOMBS POLICE—JUSTICE HOGAN.

Richard Valentine and Wm. Ross, proprietors of the Casino concert saloon, No. 626 Broadway, and a number of waiter girls and men who were arrested in the saloon on Sunday night, were yesterday taken before Justice Hogan at the Tombs. The proprietors were held to bail to answer the charge of having violated the Excise law, and the remainder discharged.

The following persons were brought before Justice Hogan at the Tombs, for alleged violation of the Excise law: Henrietta Lecht, Nos. 18 and 20 Howard-st.; Christopher Ihle, No. 350 Greenwich-st; Peter Roach, No. 502 Canal-st.; Herman Discher, No. 67 Elizabeth-st.; Frederick Gathanan, No. 353 Broome-st.; Francis Rexweger, No. 263 William-st.; Richard Valentine, No. 626 Broadway; Wm. Ross, No. 626 Broadway. They were held to bail in the sum of $100 each.

JEFFERSON MARKET POLICE—JUSTICE LEDWITH.

Peter Medow, No. 163 Prince-st.; William Meyers, No. 16 Leroy-place; Harmon Schroeder, No. 16 Leroy-place; Michael McNally, No. 158 East Twenty-second-st.; Herman Schroeder, No. 259 Spring-st., were yesterday charged with violating the Excise Law by selling spirituous liquors without license, and required by Justice Ledwith to give bail in $300 to answer. John McDonough, No. 521 Canal-st., gave bail in $300 to answer the charge of keeping open his liquor store on Sunday.

[Before Justice Dodge.]

Yesterday there was an examination of the complaint against Zeno Burnham, preferred about two weeks since, by Mr. Simon Kerl, No. 737 Broadway. It was charged that Burnham, without license, held an auction sale of furniture at No. 44 West Sixteenth-st., and that it was conducted in a deceitful manner, with a view to swindle the public. Mr. Kerl founded the charge on his belief that the circumstances attending the sale clearly showed that fraud was intended, especially from the fact that Burnham was not authorized by license to act as auctioneer. Mr. Samuel Wynn, of the firm of Wynn & Co., auctioneers, stated that he had authorized Burnham on the occasion in question to act as his clerk, and it was in this capacity he conducted the sales at No. 44 West Sixteenth-st. Mr. Spencer, who appeared for Burnham, argued from the complaint itself, that it contained no charge of fraud against his client, and, as far as his selling without a license is concerned, the very most that could be made of it was a violation of the city ordinances. He therefore moved to dismiss the proceedings in the affidavit, as there was no offense made out by which Burnham could be considered a mock auctioneer, it having been fully established that he was authorized to sell as the clerk of Wynn & Co., and that in his so doing nothing of fraud had been discovered.

Justice Dodge reserved his decision.

THE LINCOLN FUND.

To the Editor of The N. Y. Tribune.

SIR: Some considerable time since, myself and others sent in our subscriptions to the Fund for the erection of a monument to our martyred President. As I have no doubt that many others who subscribed have never since heard of their money, I have thought an inquiry through your columns might elicit some response from those who had the matter in hand.

Very respectfully, GEORGE H. MANN.
New-York, Feb. 15, 1867.

BULL'S HEAD.—The live stock markets are all in an excited state this week owing to light arrivals and higher prices. With only 4,463 beeves for the week, which is about the average for a month past, they are fully 1c. ₩ lb higher than last Monday. Less than 1,700 head were on sale at One-Hundredth-st. yesterday, all of which were sold before night, mostly at 16@18c. ₩ lb. Sheep have jumped up 2c. ₩ lb during the week, with only 9,967 for the total supply, which is 6,000 less than the comparatively light run of the previous week. They are now selling quickly at 7½@9½c., mostly at 8½@9½c., and not half enough are coming forward to supply the wants of butchers. Hogs are advancing more slowly, as is their nature. They are moderately active at 8½@8¾c., with 13,792 for the week. Western Dressed are selling at 9½@9¾c.

THE MONEY MARKET.

SALES AT THE STOCK EXCHANGE.

U S 6s 1881 Coup
160,000........110¾
U S 6s 5-20 Reg '62
5,000........107¾
U S 6s 5-20 Coup '62
5,000........111¼
5,000........111¼
U S 6s 5-20 Reg '65
5,000........109
U S 6s 5-20 Coup '65
2,000........108½
50,000........108⅜
8,000........108⅜
U S 6s 5-20 Reg '65 n
8,000........106¾
U S 6s 5-20 Co '65 n i
27,500........106¾
5,000........106⅝
24,500........106¾
100,000........106⅝
U S 5s 10-40 Coup
2,000........101½
16,000........101⅝
U S 5s 10-40 Reg
20,000........98½
Treas Notes 7 3-10
1st Series.
50,000....small.105⅞
2d Series.
9,500........105¾
N Y State 5s '75
5,000........93
N Y State 7s B L'n
3,000....reg.105¼
Ohio 6s 1881
2,000........101
Tennessee 6s
1,000...ex-cou. 67½
12,000........67½
Tennessee 6s new
40,000........65½
8,000........66
No Car State 6s
10,000..ex-cou. 52
Missouri 6s
28,000........93
Erie 3d Mortgage
1,000........103
Pitts, Ft W & Chic
100........96½
1,200........96
American Express
17........57½
United States Ex
35........55

Mich South 2d m
1,000........93
Mich South S F B
5,000........98
P Ft W & Chic 2 m
1,000........95
Cleve & Pitts 4 m
1,000........74½
Cleve & Tol S F B
5,000........101
Chic & Alt 1 m
5,000........99
Chic R I & Pa R 7s
7,000........96½
Galena & Chic 2 m
1,000........98
Tol & Wab 1 m ex
7,000........89½
Bank of New-York
25........106¼
Bank of Commerce
150........113
American Exc B'k
10........115½
Centr National B'k
29........109½
Fourth Nation B'k
118........104½
Bank of Comw'lth
10........107
West Union Tel
600........42½
Mariposa Pref
400........23½
Atlantic Mail
200........90
200........89
100....2d call. 89
100........88½
South Amer Nav & Marine Rail Co
100........b60.116
Adams Express
120........56
Wells, Fargo Expr
30........59
50........59
Mil & St Paul
100........38
Mil & St Paul Pre
50........57½
30........57
Cleve & Pittsburg
700........80½
500........80½

Pacific Mail
800........130
200........130¼
200........130¼
95........130¼
5........131
200....2d call. 130¼
50........130
180........129¾
100........129¾
100........129½
200........s60. 129¾
300........s60.129
N Y Central
100........102¼
800........102¼
1,030........s10.102½
800....2d call. 102¼
Erie
200........55¾
500........s30. 56
200........56¼
200........56¼
500........56¼
500........b20. 56¼
25........56
400........56¼
100........55¾
100........s60. 55¾
Erie Preferred
100........72
Hudson River
300........137¼
200........137¼
N Y & N Haven
8........118
25........117
Chic & N W
1,000........35¼
200........35¼
Chic & N W Pref
200........65¼
100........65
Chic & Rock Island
400........96¼
2,000........96¼
100........s15. 96
100........95
600........95¾
500........95¾
300........s30. 95
Illinois Central
100........s60.116
200........116
300........s30.116

SECOND BOARD.

U S 6s 1881 Coup
3,000........110¾
U S 6s 5-20 Coup '62
2,450........111
U S 6s 5-20 Coup '65
2,000........108½
3,000........108½
U S 6s 5-20 Cp '65 n i
17,500........106¾
Tennessee 6s
18,000..ex-cou. 67½
Peninsular R'd 1 m
4,000........80
Chic R I & Pa 7s
5,000........90½
Western Union Tel
100........42½
N Y Central
300........102½
700........102½

Atlantic Mail
100........87½
Wells Fargo Expr
100........59
Adams Express
5........56
American Coal
100........57
Pacific Mail
20........129½
370........129
50........129½
200........s60. 128
Hudson River
500........137
Reading
300........104
Chic & N Western
50........36

Erie
200........s60. 55¾
400........s60. 55¾
Mich So & No Ind
100........72¼
Illinois Central
100........116
Cleve & Pitts
200........80½
Chic & N W Pref
200........s30. 65¼
Chic & R I
1,050........96
100........96¼
50........96¼
Mil & St Paul Pref
100........57¼
300........57
Quicksilver
200........38¼

OPEN BOARD OF BROKERS—10 A. M.

Ohio & Miss Cer
10,000........25½
West Union Tel
100........42
N Y Central
100........102½
500........s3. 102½
100........b15. 102½
Canton
100........45¾
Mich So & N Ind
300........72¾
800........72¾
200........c. 72¾

Erie
400........c. 56¼
600........s3. 56½
1,800........56¼
400........b3. 56¼
200........s3. 56¼
100........b15. 56½
100........s5. 56¼
Chic R I & Pa
400........96¼
200........b3. 96¼
1,100........96½
400........s3. 96¼

Chic & N West
200........b3. 35¾
200........c. 35¼
100........b10. 35¾
200........s3. 35¼
Atlantic Mail
100........89
Chic & N W Pref
200........65¼
100........c. 65¼
100........s3. 65
100........b3. 65¼
Pitts F W & C
100........s3. 96¼

OPEN BOARD OF BROKERS—1 P. M.

O & Miss Cer
20,000........s30. 25
Con'd Greg. Gold
300........b3. 14
Pacific Mail
100....ex-div. 129
Atlantic Mail.
200........89
Western Union Tel
100........42½
Reading
200........c.104½

N Y Central
2,100........102½
300........s60.102
Erie
400........s3. 56
100........b15. 56½
Cleve & Pitts
300........80½
Chic & North West
100........35¼
100........35¼
100........b3. 35¼

Chic Rock Is & Pa
800........95¾
300........s30. 95¾
300........95¾
100........s3. 95¾
Mich So & N Ind
800........72¼
200........b3. 72¼
Chic & N West Pre
200........65
200........c. 65
100........b3. 65¼

OPEN BOARD OF BROKERS—3½ P. M.

Pacific Mail
100....ex div. 128½
100........b3.128½
Atlantic Mail
100........87
100........85½
100........84
N Y Central
800........b3.103
Adams Express
100........b3. 56½

Erie
100........b3. 56½
100........56½
Reading
200........104½
Mich So & N Ind
300........s3. 72½
100........b3. 72½
P. Ft W & Chic
500........96
200........b3. 96

Cleve & Pitts
200........80¼
1,000........s30. 80
200........b3. 80¼
Chic & N W Pref
200........s60. 65
Chic R I & Pa
100........95¾
400........96
100........96¼
200........s3. 96

MONDAY, Feb. 25—P. M.

Gold closes at 138¾, after selling at 137¾@138¾.

Gold-bearing Government stocks continue firm and in good demand. Old 5-20s sold at 111¼@111¾, and some of 1865 at 106¾@106¾. The Assistant-Treasurer at this port is not a seller to-day. The general share market is dull, and the fluctuations quite small. The number of speculators has decreased visibly, and a large proportion of the crowd which thronged William and Broad-sts. during the Rebellion have returned to their legitimate business. Speculators for an advance have since New-Year suffered losses sufficient to account for the absence of all who have left, as well as for the weakness of those who remain. During the Rebellion speculation attracted railway property to the street, and the losses have in consequence fallen upon those who made such rapid fortunes by the advance.

At the Second Board prices showed no improvement on the general list. Governments continue firm, and railway shares were neglected. Late in the day prices were stronger for New-York Central, which sold at 103¼@103¾, and Rock Island, which was quoted 96¼@96¾, after selling at 95. The closing prices were: New-York Central, 103¼@103¾; Erie, 56¼@56½; Hudson, 137; Reading, 104@104¼; Michigan Southern, 72¾@72½; North-Western, 35¼@35½; North-Western Preferred, 65¼@65½; Rock Island, 96¼@96¾; Fort Wayne, 96; Cleveland and Pittsburgh, 80¼@80¾.

The following table will show the decrease in value upon a few of the fashionable stocks since Jan. 2, 1867:

	Jan. 2.	Feb. 25.	Decrease in market value.
Atlantic Mail	110	88½	$860,000
Pacific Mail	173	130	4,600,000
New-York Central	113	102½	2,500,000
Fort Wayne	105	96	847,000
Erie, common	67½	56	2,650,000
Michigan Southern	83½	73	910,000
Cleveland and Pittsburgh	91	81	540,000
North Western, common	46	36	1,390,000
North Western, preferred	82½	65½	2,210,000
Cleveland and Toledo	125	119	300,000
Rock Island	104½	96	520,000
Total fall in 11 stocks			$19,227,000
Delaware and Hudson Coal			1,000,000
Cumberland Coal			2,500,000
Wilksbarre Coal			375,000
Spring Mountain Coal			250,000
Western Union Telegraph			1,250,000
Quicksilver Mining Co			700,000
Mariposa Mining Co			500,000
Union Navigation Co			1,000,000
Total 19 stocks			$24,812,000

This difference in market values gives an idea of the extent of the collective loss to what is known as "the street" and why speculation for an advance halts. Erie and Cumberland show a loss of about $5,000,000. In this period there has been a large advance in Government stocks of all issues, and a steady rise in Bank shares and Railway mortgages, the whole movement showing a disposition on the part of people to put money where it can draw "certain interest," instead of leaving it where it takes the risks attendant on the "ownership" of railways and unprofitable mines.

Money on call is 6@7 per cent, with occasional loans to favorite persons on Governments at something less. Best commercial bills are 7 per cent, with a few names salable at 6½. Fair bills, four months, 7½@8 per cent.

The following are the quotations of Exchange: London, 60 days, 108¾@109; sight, 109¾; commercial, 107¾@108¼; Paris, long, 5.17½@5.16¼; short, 5.15@5.12½; Antwerp, 5.21¼@5.18¾; Swiss, 5.21¼@5.18¾; Hamburg, 36¾@36½; Amsterdam, 41¾@41½; Frankfort, 41¼@41½; Bremen, 79@79½; Berlin, 72¼@72¾.

Freights are dull. The engagements to Liverpool are 1,200 bales of Cotton at ¼d. for compressed, and by steamer 750 bales of Cotton at ½d., 14,000 bush. Corn at 7d., and 600 bales of Cotton (via Glasgow) at ½d. To Glasgow, 15,000 bush. Corn on private terms. An Italian bark was chartered from Philadelphia to Genoa with 2,000 bbls. Petroleum at 6s.

The business of the Sub-Treasury was: Receipts for Customs, $607,000; for Gold Notes, $36,000; total receipts, $2,735,404 03; total payments, $4,790,783 32; balance, $130,896,971 92.

The Pottsville Miners' Journal of Saturday reports:

The quantity of coal sent by railroad this week is 29,695 04 tuns against 55,075 tuns for the corresponding week last year. The trade sums up this week as follows, compared with last year:

	1866. Week.	1866. Total.	1867. Week.	1867. Total.
	124,777	1,027,797	102,479	774,842
	102,479	774,842		
Decrease	22,298	252,955		

Messrs. Bowles, Drevet & Co. of Paris, under date of February 8, say:

The principal, and we may say only important event of