THE COURTS.

THE ERIE RAILROAD SUITS.

FOUR APPEALS IN THE RAMSEY AND SUSQUEHANNA RAILROAD SUITS BEFORE THE COURT OF APPEALS—ARGUMENTS OF DAVID DUDLEY FIELD, ESQ., THE HON. LYMAN TREMAIN, AND THE HON. AMASA J. PARKER.

Four several motions in as many cases in regard to the Erie Railroad Company have just been made at Albany before the Court of Appeals. All the suits but one were what are known as the "Ramsey suits." The Hon. Lyman Tremain, who appeared for Mr. Ramsey, in making the motion in the first case, said:

The title of this case is the Erie Railway Company agt. Ramsey et al., and it is a case of contempt. There are two appeals in the same proceeding, which I purpose to move together. The principal appeal is from an order of the General Term, modifying an order of the Special Term of the First Department, imposing a fine upon Joseph H. Ramsey for violating an injunction order restraining him from proceeding to take any steps in an action commenced by him against the Erie Railway Co. and others. The second appeal in the same case is an appeal from an order of the Third Department dismissing Mr. Ramsey's appeal from an order adjudging him guilty of contempt. I will state to the Court how these two appeals came up. In the first instance, an order was granted by Judge Barnard requiring Ramsey to show cause why he should not be punished for contempt in violating the injunction which had been issued by him. On the return of that order Ramsey showed cause, and then an order was issued by Judge Barnard, at Special Term, adjudging him guilty of contempt, and directing a reference to ascertain the amount of damages. We appeal from that order. On the coming in of the report of the referee, Judge Barnard made a second order fining a portion of the damages, between $3,000 and $6,000, by way of fine upon Ramsey. We appeal from that order. The department entertained the last appeal and dismissed the first upon the ground that the order was not appealable. We have appealed from both orders. The last order of the department reduced the fine from about $5,000 to $200, and dismissed the other appeal.

This action was brought by the Erie Railway Company for the purpose of enjoining the defendant Ramsey from further prosecuting a suit commenced by him against the Erie Railway Company et al. in the Supreme Court in the Sixth District. An injunction order was procured from Judge Barnard on the 9th of November, 1869, restraining defendant Ramsey, his agents, etc., "from proceeding any further in the action wherein Joseph H. Ramsey is plaintiff, and the Erie Railway Company, Jay Gould and others are defendants, and from commencing, or permitting to be commenced, any other action of a similar nature against the Erie Railway Company."

This injunction order was served upon Mr. Ramsey on the 20th day of November, 1869. On the 17th day of December, 1869, the motion papers in this proceeding were served upon Ramsey, together with an order to show cause before Judge Barnard, at the County Court House, on the 20th December, why he should not be punished for a contempt in violating the injunction herein, "by proceeding further in the action brought by said Ramsey against the Erie Railway Company and others," or for other relief.

Upon the affidavits, among other things, it was shown that, after the injunction order was served on Ramsey, he consulted with his counsel as to what course he should pursue; that he was informed by his counsel that the Supreme Court at General Term in the First District, judge Barnard dissenting, had decided such an injunction to be void, and affirming part of the Court, had decided such an injunction to be void, and that it might be disregarded; that he was subsequently informed that, if it might be disregarded, that he was subsequently informed that when the motion to vacate the injunction in this action came on for argument before Judge Barnard, he had said that it was granted in the first instance upon the allegation in the complaint of a fraudulent conspiracy between the Erie Railway Company, in the interest of the defendants Gould, Fisk and The Erie Railway Company, in the case of Ramsey against them and others, applied to Judge Cardozo for a stay of proceedings in that case, under an alleged order of Judge Barnard, appointing a receiver of the Erie Road in that case, upon a notice of motion to vacate the order returnable on the 14th of December. This was two days before the service of a single paper in the Ramsey case against Gould et al., since the service of the injunction herein on Ramsey, with the exception of a notice of the substitution of plaintiff's attorney, which was served on the 29th November. Evidence was admitted upon this reference, under objection, of the value of services performed by the counsel for the Erie Railway Company, subsequent to the granting of the order to show cause why Ramsey should not be punished for a contempt. By far the greater portion of the damage reported by the referee would seem, incidentally to have been awarded for such services. The testimony was submitted to the Court at Special Term, and no time was given for the filing of exceptions to the report, before the argument of the motion upon the coming in of the report was heard, and the order made from which an appeal was taken to the General Term of the Supreme Court. The General Term, after argument, dismissed defendant's appeal from the order adjudging him in contempt, and ordering a reference, and modified the other order appealed from by reducing the amount of the fine from $5,325 to $200, and affirmed the order as to its other provisions. From both the orders of the General Term defendant now appeals to this Court, and makes the following points:

I. The order first made adjudging defendant Ramsey guilty of contempt, and referring it to a referee to ascertain the damage, was an irregular order, and the order appealed from was erroneous; it should be reversed with costs. Instead of remitting the case to the Supreme Court on this appeal, inasmuch as the Court below made a first order imposing the penalty, this Court should, upon the appeal from the latter order, make the proper order in the case.

II. Both these orders are appealable to this Court. 7 Abbott, U. S. 401. Code Sec. 11, 29 N. Y. 414.

III. The Court below erred, in adjudging defendant Ramsey guilty of contempt in violating the injunction order issued in this action. The injunction was void, and entitled neither to respect nor obedience.

Even before the Code, Chancery never allowed an injunction in an action brought to restrain the prosecution of another action in the same court. That court would control its own process, and the proceedings of its own officers, at least the filing of an original bill for an injunction, and an injunction order would not be granted in Chancery to stay proceedings, even at law, where the court in the action at law had full power to grant relief in the premises. Since the Code, the same doctrine has been constantly held. It being proper to put in an equitable defense to a cause of action purely legal, it has always been held improper to grant an injunction restraining proceedings in other actions. The injunction in this case is not the one issued by the Court of Chancery to stay proceedings at law. That was only to prevent justice by introducing into the controversy some elements which could not be considered in a court of law, as in cases of discovery or specific performance, while in this case the injunction prohibits the party from proceeding with his suit at all, in the only court which had jurisdiction or power to give him relief.

IV. The Supreme Court, in the First District, having deliberately adjudged that such an injunction was absolutely void, and that decision being in full force, and Ramsey having acted under it, under the advice of competent counsel, learned in law, he could not lawfully and properly be adjudged guilty of contempt for such action. By a reference to the case of Sound agt. Erie Railway Company, 61 Barb. 383, it will be seen that not only that the court repeatedly declared such an injunction void, but that was the precise point involved. This being a principle of equity, it applies with tenfold force to a case where the citizen is proceeded against as for a criminal offense, a contempt punishable by fine and imprisonment in the county jail. The Supreme Court and Court of Appeals possessing equity as well as law powers, should apply the principle of this case, which is a recognized equity doctrine, and relieve Ramsey from this unjust fine. He was informed of the decision in the Schell case, believed in it, respected it, followed it. Is it not monstrous that he should be adjudged guilty of contempt for so doing? Is not such a decision calculated to bring courts into "contempt?" Assuming the decision in 61 Barb. wrong, and that the Court would review and reverse it, this is not the proper occasion to do it. To adjudge Ramsey guilty of contempt now would have all the detestable features of an *ex post facto* law; it would be punishing a man for obeying the law; fining and imprisoning him for respecting and following the decision of the Supreme Court of the State; adjudging that conduct criminal which the Court had, before its commission, decreed to be innocent. Is any tribunal, not blinded by passion or prejudice, prepared to thus decide?

V. After the plaintiff procured this injunction, its attorneys in its behalf took further steps in the action in which it had enjoined Mr. Ramsey from proceeding further. This was a total waiver of the injunction.

VI. The General Term ought to have set aside the order of Judge Barnard entirely, because the proceedings before him were wholly illegal and also because the proceedings before the referee were irregular and illegal, as the Judge now stated himself in the following particulars, viz.: 1. The motion papers were founded upon one single act of Ramsey, viz. the making of a motion, while the proof of damages embraced other acts. 2. The reference before the referee, and on which he made his report which was confirmed by Judge Barnard, was based solely upon acts done and services rendered after the service of the motion papers to punish for contempt. The order to show cause was founded upon an alleged violation of an injunction *already committed*; the Court certainly could only punish for the damages sustained up to the time of granting the order to show cause. 3. On the same day the report was argued Judge Barnard proceeded to entertain the motion to fine Mr. Ramsey, in spite of the objections of Mr. Peckham, counsel for Ramsey, thus depriving him of the following legal rights: 1. The right to a notice of eight days for the motion, or an order to show cause at a shorter time, given by the Code; and, 2. The right to file exceptions to the report within eight days, given by the rules. (Rule 32.) Such exceptions were necessary, in order to show the error in the proceedings before the referee, or that he had erred in determining the facts. (30 N. Y., 291.)

VII. If the injunction was valid, yet the imposition of $250 counsel fees, as part of the fine was wholly illegal. This point is adjudged in this Court. 7 Abbott, N. S. 401.

This Court also condemned arbitrary allowances in Downing agt. Marshall, 37 N. Y. 380, and in Devin agt. Patcher, 36 id. 441. Where an injunction was violated which had been erroneously or improvidently issued, as in the present case, the Chancellor held that the only fine to be imposed was the taxable costs of the motion to punish for contempt. 4 Paige, 448.

VIII. No fine could lawfully be imposed for any amount in this case, because the act of Ramsey did not and could not "defeat, impede or prejudice any right or remedy" of the Erie Railway Co. The right or remedy imparted must exist independent of the injunction. The act was the mere making an ordinary motion in a court which had jurisdiction of the parties and subject-matter. A party may be guilty of misconduct in violating a lawful order, and yet under this statute he cannot be fined one cent unless his conduct produces the above described effect. Unless the Erie Company suffered, as one of its "rights" or "remedies," immunity from suit at law, or when used immunity from any further prosecution thereof, Ramsey has neither defeated, impaired nor prejudiced any of its "rights" or "remedies."

IX. This injunction, being now brought squarely before the Highest Court of the State, should be condemned by the unconditional reversal of this order, and denial of the motion with costs. The order of injunction was a flagrant abuse of judicial power and discretion. For one year it has held the hands of a citizen, and prevented his lawful attempt to obtain relief against Fisk, Gould, and the Erie Company. Although, after two unsuccessful motions at Special Term to vacate it, it was finally dissolved on appeal to the General Term, yet it leaves now, as its poisonous sting, a conviction upon the records of the Court against Mr. Ramsey of a contempt, and a punishment that he pay a fine of $200, or be imprisoned in the County Jail. That such an arbitrary and abominable monstrosity may not become a precedent, and that the influence of the highest tribunal in this State may be salutary and conservative, it is submitted that the order should be entirely set aside.

The Hon. Amasa J. Parker, appearing for the Erie Railway Company, said he should argue the appeal from the order of the First Department, made Nov. 1, 1870, discharging the appeal from the order of the Special Term, made Feb. 15, 1870, declaring the defendant guilty of a contempt, and ordering a reference to ascertain the damages sustained by the plaintiff. On the 15th February, 1870, the Special Term made an order declaring the defendant guilty of a contempt, and ordering a reference to ascertain the damage sustained. The defendant appealed. It is from an order dismissing that appeal that the defendant appeals to this Court. We say that the original order was not appealable to the General Term. It was an interlocutory order, declaring the defendant guilty of contempt, and referring the matter to a referee. This appeal, we claim, was properly dismissed, but whether properly or not, this Court has no jurisdiction of the case. If the General Term was right or not in dismissing it, they have no right to bring the question up here. This proceeding to punish for a contempt is not a special proceeding. It must be a final order, and it is not a final order. Next, the order was justified by the proofs now before this Court, and which were established originally at the Special Term, when the order for reference was made. My learned friend says that we injunction which attempts to restrain a proceeding in another action is absolutely void. Where can he find any authority for such a doctrine as that? I always understood that an injunction made by a judge cannot be void, if he be a judge having a right to issue injunctions and if his Court have jurisdiction of the subject matter. It may be irregular and a practice that this Court would condemn; but it cannot be absolutely void. The proofs showed a willful contemptuous disregard of the Court. Indeed, the defendant in his own affidavit avowed his disobedience, and attempted to justify it, by the advice of counsel, that the order was void for want of jurisdiction. His language was, that he, "under such advice, and believing that he had the strict and legal right to do it, has gone on with the orderly conduct of his action," &c., that is to say, he did precisely that which he was enjoined by the Court not to do, knowing it, "Defied you, and intended to defy you, because you usurped authority to command my obedience." A defendant who does this, does so at his peril, and must take the consequences. That the Court had authority to command the obedience—that is to say, had jurisdiction to issue the injunction—is shown in the points upon the final order, adjudging the defendant guilty of a contempt, and imposing a fine.

But, if it said that Ramsey is to be excused from this disobedience because, when he made a motion at Delhi, in disobedience of the injunction, that motion was opposed by the other party. Can that be sound doctrine? He is restricted by an injunction from doing a certain act; he does that act which could perhaps give us irreparable mischief, if it was not vacated. A careful examination of the evidence will show that we did nothing but in the way of self-defense. I claim, therefore, that the order made at the General Term, which showed that the defendant had been guilty of a violation of this injunction, was correct. The Judge was clearly right in ordering the reference for the purpose of inquiring how much punishment should be inflicted, and that there was no right to appeal to the General Term, and no jurisdiction here to hear that appeal, whether it was right to appeal it to the General Term or not.

David Dudley Field, esq., of counsel for the Erie Railway Company, next argued substantially as follows:

I am to discuss the simple question whether a citizen may throw to the winds as a thing to be contemned and trampled in the dust an order of the highest Court of jurisdiction of the State of New-York. And whether when he has done so he may throw in our teeth absolute, unconditional defiance. Let me go back to the 24th day of November, 1869. There was a railway—I do not care in whose hands—a railway fostered by the State, with a hundred millions of capital, with more than 20,000 people under its employ, with revenues larger than the revenues of this Government during the whole of Washington's Administration; and that day there was served on its officers three papers purporting to be orders granted—where do you think? In the most difficult place in the State to reach—Delhi—one of which suspended 8 out of the 17 directors from all right to exercise any office in the government. The other enjoined the Company from recognizing these eight—commanding there eight not to go near the corporation or to have anything to do with its affairs; and the third, appointing a receiver of the whole property and franchises of the corporation. Well, might it be said, as was said to me by a Judge of the Supreme Court, that where such strange things happen, society cannot exist under such an administration of the law. If an *ex parte* order of that kind can be granted, we may as well give it up. The officers suspended were the President, Vice-President, Treasurer, Controller, and Counsel, without whose sanction not a bill could be paid, and if the order had been obeyed the Company would have been bankrupt at three o'clock. Only two of the orders were served—the order appointing a receiver was kept back. The Company, through its attorney, immediately served a notice upon Mr. Ramsey, and what did he do? He before one Judge Barnard, and what did he do? He said, "I cannot receive it for another attorney is appearing for the Company." "Who is he?" "I won't tell you." And immediately on that the Company is informed that an order has been granted for the appointment of a receiver which this suppositious attorney is to resign for the defendants and the plaintiffs are to move. Under these circumstances, counsel for the Company went to get an injunction to stay him from action in the case until an opportunity could be given to be heard. The injunction was granted and served on Ramsey on the 26th, and yet it appears by the record that on the 27th, 28th and 29th he went on and served these orders on other officers of the Company, just as if nothing had happened. He immediately gave notice of a motion, before the same Judge who had granted this *ex parte* order at Delhi, to confirm these *ex parte* orders, and compel the counsel of the Company to go to Delhi in midwinter, travel 40 miles over the snow, and to argue that motion. And then, when served with papers to punish him for violating the injunction under those circumstances, he says—"I don't care anything about it. It is good for nothing. I had a right to do it, and I will do it." And from that day to this he has never paid the slightest attention to this injunction. A motion was made to punish him for the violation of the injunction, which was served Dec. 17, immediately after his motion at Delhi to confirm those orders. The first Court before which this motion was made was composed of men of the highest character, who were of opinion that he was responsible for all the damages occasioned by everything that took place subsequently, upon the principle that if he had not violated the injunction nothing further would have been done to the property. The referee found the damage to be $3,000. But when it came before the General Term they reduced the amount to $200—$10 costs and $250 for three counsel for going to Delhi in midwinter to argue this motion. The question involved is not whether the Judge had the right to grant the injunction, but whether he would decide one way or the other, to say whether he would or would not grant it. And next, whether the fine was unreasonable. What would any lawyer intrusted with the defense of the Company at that particular moment do but what was done by counsel at that time? If a lawyer would not do that, then I say there is coming a time when a lawyer will not do his duty to his client. That was not a time to hunt over the State for a Judge to give a stay of proceedings that might not be of any avail whatever.

In regard to the amount allowed for expenses, neither the Special nor the General Term could fix them. The judges could not give their opinion, but the amount must be settled by evidence.

The next motion, made by the Hon. Lyman Tremain, was in the case of Ramsey agt. The Erie Railway Company, being an appeal of the appellant (Ramsey) from an order of the General Term in the first department staying all plaintiff's proceedings. The following is a statement of facts in the case:

At a Special Term for the trial of issues, held in New-York, before Justice Barnard, the above cause was moved for trial by the defendants, when the plaintiff moved for a postponement of the trial, which motion was denied. The plaintiff was wholly unprepared for trial, having been under an injunction against taking any proceedings in the cause until five days prior to the day when said motion was made, at which time the attorney who had procured the injunction filed a stipulation modifying the injunction, so as to allow Mr. Ramsey to prepare for trial and the Judge thereupon dismissed the complaint, and entered an order dismissing the complaint with costs, and giving the plaintiff leave at that time to open the default and stay the costs.

The motion for Mr. Ramsey thereupon made a motion before the Special Term, held by Justice Brady, to open the default and set aside the order dismissing the complaint, who, after hearing the parties, made an order that the order granted at the Special Term, the 28th of October, 1870, dismissing the plaintiff's complaint and giving plaintiffs leave, at that time to move to open default and try the cause, be vacated and set aside, and the complaint reinstated. The defendants in this suit appealed from the last order to the General Term, and after said appeal had been argued, and the decision of the Court reserved, but before the counsel for Mr. Ramsey had left the court-room, the counsel for the defendant moved for an order staying all proceedings on the part of the plaintiff in this action, until the decision of the appeal, which was resisted by the counsel for Mr. Ramsey, but the order was granted, Justice Barnard and Cardozo concurring, and Justice Ingraham dissenting, and from this order the plaintiff appeals to this court.

The points on the part of the Erie Railway Company, respondent, were to the effect that the order was not appealable to the Court of Appeals, as it did not affect a substantial right; that the order was right upon its merits, and that the order of the General Term did not arise upon the present appeal. The questions might come up by and by, but it would be premature to discuss them now.

The last of the motions was made by the Hon. Lyman Tremain on behalf of the respondents in the case of Fisk, jr., appellant, agt. The Albany and Susquehanna Railroad Company.

This was an appeal from an order of the General Term of the Third Department dismissing an appeal taken by the plaintiff from the order of the Special Term (Judge Brady), changing the place of trial from New-York to Rensselaer County for the convenience of witnesses.

The place of trial named in the complaint was the County of New-York. Defendants (except Herrick) moved to change the place of trial to Albany County, on the ground of convenience to witnesses. It was conceded by the plaintiff on the ground of convenience to witnesses, and to avoid a separate trial could not be had in Albany County, and also on the ground that the defendant, Herrick, did not join. In the moving affidavits, as well as the pleadings, it appeared that the defendant, Herrick, had been made a party as one of the directors, holding even under an appointment of the Common Council of Albany; that before the commencement of the action he had been removed, and that he was willing to join with the plaintiff, and wholly hostile to the other defendants, and in no manner connected with their defense. The Special Term having announced its decision that the place of trial be changed to Albany, unless the plaintiff's counsel elected Rensselaer County; and the plaintiff's counsel having elected Rensselaer it was changed to Rensselaer, and the proper order was entered. The plaintiff's counsel has pre-hostly, without authority, entered an order in a different form, but on regular notice the order was settled.

The plaintiff appealed to the General Term of the Supreme Court, and a motion was made to dismiss the appeal on the ground the order was not appealable, and also on the ground the notice of appeal had been served on the Clerk of Rensselaer County. The plaintiff on the argument objected that the decision of the Third Department was not the proper tribunal to make said motion before that the order was entered in the First Department and the appeal pending. It was answered that the order was also entered with the Clerk of Rensselaer County. The General Term of the Third Department dismissed the appeal, and the plaintiff appeals from that order here.

The argument on this latter case was about to be proceeded with when Justice Grover, who had been examining the points in the case, remarked:

The Court of Appeals has already decided that where an order is made changing the place of trial, and an appeal is taken from that order, the papers are all to go to the Department to which they are directed, and be heard in that. This was rightly heard in the Third Department, and the Third Department, we think, rightly dismissed the appeal, and that their order is not appealable to this Court.

The decisions in the other cases were reserved.

RIVAL CHARITIES—A WILL CARELESSLY DRAWN.

An action has been brought in the Superior Court by the St. Luke's Home for Indigent Christian Females against William C. Wetmore and Cleborne Ferris, as executors of the last will and testament of John Alstyne, and the Association for the Relief of Respectable Aged and Indigent Females, to gain possession of $25,000, alleged to have been bequeathed by the will and codicil of John Alstyne, who died June 3, 1869—$5,000 by the will and $20,000 by the codicil. The words used in the will and codicil were: "The Society for the Relief of Indigent Aged Females in the City of New York." The executors were about to pay over the money to the Society having as its statutory name "The Association for the Relief of Respectable Aged and Indigent Females," when this suit was brought to resist the payment. St. Luke's Home claims that their Association was meant by the words of the will, because (1) The testator was an Episcopalian, and therefore the legacies must have been intended for an Episcopal institution; (2) the testator helped the society in his lifetime; (3) influences surrounded him which would induce such a disposition of the money, and (4) the name used in the will and codicil did not apply to the defendants' institution any more than to their own.

The defense is, that beside the evidence of the name in the will and codicil, the following facts show the testator's intention to give the legacies to the defendant's Society:

William Wetmore, one of the executors and an old friend of the testator, drew the will. On going to his office to get instructions, the testator brought with him a written list of the charitable societies to which he intended to leave legacies. These Mr. Wetmore incorporated in the will by the titles contained in the list, without noticing particularly whether the titles were correctly stated. Mr. Wetmore testified that when the codicil was made Mr. Alstyne spoke of the Society in question as "The Old Ladies' Home," not knowing of any other old ladies' Society. He (Mr. Wetmore) remarked to the testator that he was doing very well for the Old Ladies' Society, referring to the defendants, who were familiarly known by that name; to which the latter responded that he intended to do well by them, that his mother was a very old lady, and he gave those legacies on her account. The defendants further contend that as Mr. Alstyne was unmarried, and without a relative or friend to whom he would have been likely to talk about his domestic affairs, the mistake in the name leaves no reasonable doubt that they were the Society intended to be benefited. It was also argued on behalf of defendants that the similarity of names was all in their favor, and that had the testator meant the St. Luke's Home, he would not have failed to use those specific words.

Decision reserved.

A FRAUD SOMEWHERE.

A peculiar case came up in the Special Term of the Common Pleas, before Judge Robinson, yesterday, entitled Margaret Larkin, Catherine Larkin, and James Larkin, an infant, agt. John F. Wilson. It is an action to recover a deed alleged to be wrongfully held by the defendant. The plaintiffs testified that on the night of the 1st of January, 1869, Wilson, who then kept a cracker bakery at No. 73 Fulton-st., set fire to his bakery, in conjunction with six or seven of his men, to obtain the insurance upon it; plaintiffs saw the men ignite the building with torches and matches; plaintiffs' house was damaged by the fire, and Wilson subsequently gave Margaret's husband a promissory note for $1,000 to indemnify him for the loss. On the 28th of May following, Owen Larkin, the late husband of the plaintiff Margaret, purchased a deed from Wilson of certain property in Brooklyn, paying him therefor $1,800, $400 in gold, $200 in greenbacks, and the $1,000 note given by Wilson to Larkin in January. About three hours after this transaction Larkin went to Wilson's bakery, No. 334 Cherry-st., where he was employed, and while there the oven burst and Larkin and his eldest son were killed. The deed which was in his pocket disappeared, and now plaintiffs claim that Wilson has possession of it, and they sue for its recovery or for its value.

The defense is an absolute denial of every allegation. Defendant himself testified that he never sold a deed to Larkin, and never saw Mrs. Larkin until after her husband's death. Mrs. Larkin frequently interrupted his testimony with ejaculations of denial, and wept excitedly. When recalled to the stand she swore that Mr. Wilson's real name was "Jacky" Brown, and that he was brought up in the Five Points. Decision reserved.

THE LAW OF LIMITATIONS UNDER TREATIES.

In the United States Circuit Court, yesterday, Judge Woodruff heard a demurrer in the case of the North German Lloyd Line of Steamers against H. H. Barney as Collector of the Port of New-York, instituted to recover certain tonnage duties alleged to have been collected in violation of the commercial treaty between the United States and the Hanseatic Republics of Bremen, Lubeck, and Hamburg.

The demurrer interposes the statute of limitations of the State of New-York, and alleges that the plaintiffs did not sue until six years after the cause of action accrued. The allegation in regard to time is admitted, but it is contended that neither time nor the statutes of this State have anything to do with the case, because, in collecting the duties, Barney acted as the mere agent of the United States; it is, therefore, in reality, a suit against the United States, and Barney disappears from it entirely; the North German Lloyd line of steamers is a corporation created by the laws of Bremen; for all purposes there, Bremen, and not this line of steamers, is the plaintiff. This commercial treaty between the United States and the Hanseatic republics is, by the Constitution, supreme law, and the laws of any State cannot control or modify it. It would clearly be bad faith to disregard its own material for its interpretation as to the rights it confers upon either party. What is not in this treaty cannot be put there by the United States nor by any one of them. It contains no article limiting the time within which Bremen, or a citizen of Bremen, shall present a claim for the violation thereof. No such article being in the treaty, it cannot be practically put there by one party without the consent of the other. Decision reserved.

THE LAW OF NEWSPAPER LIBELS—DECISION AGAINST THE EVENING MAIL ASSOCIATION.

The action brought by Capt. Samuel Samuels against *The Evening Mail* Association came up yesterday, before the General Term of the Supreme Court, on an appeal from an order made by Judge Barnard, striking out the defendants' answer as frivolous and ordering damages to be assessed by a Sheriff's jury, unless the defendants should serve within five days an answer denying or admitting the libel. The article complained of was published in *The Evening Mail* of the 29th of last July, and was as follows:

Capt. Samuels missing.

Has the commander of the Dauntless committed suicide?

"This morning there was considerable excitement in Brooklyn relative to the very mysterious and extraordinary disappearance of Capt. Samuels of the American yacht Dauntless:

"It appears that at about 10 o'clock last night he proceeded across the river with a number of friends. The entire party are reported to have been rather merry and very boisterous. They were singing sea songs, shouting, and yelling. The Captain was heard by a police officer to exclaim: 'Well, I had the race, and now I don't care what becomes of me.' Other expressions of a like nature were heard from him by different persons. It seems that the party visited Grogan's, Force's on High-st., and many other well-known drinking-saloons and ale-houses. At about 2 o'clock this morning the Captain was observed by a policeman lying prone upon the ground, at the corner of Fulton and Clinton-sts. A number of his friends were standing around him, and he again exclaimed, 'No, no; let me be, boys! I love lock the race, and I don't mention, where I go to.' The policeman did not arrest the Captain or any of his friends. This may be accounted for by the fact that a number of well-known Brooklyn politicians were among the party.

"This morning a number of the Captain's friends visited *The Eagle* and *Union* offices, the police stations and police headquarters, seeking anxiously for some tidings of him. They say that he was very despondent over the defeat of the Dauntless, and expressed a fear that he might have committed suicide. From a conversation with one of the party it was learned that Capt. Samuels had lost some $30,000 on the race, and that since his arrival in New-York he has been very down-hearted and despondent. A large number of Brooklyn reporters and others are now on the lookout for some information concerning him, but they have been thus far unsuccessful."

The amount of damages claimed was $5,000. The answer to the complaint was a denial that there was any malice on the part of the defendants in publishing the report, an assertion that it was published without their authority or knowledge, a denial that the plaintiff was injured in any manner or to any pecuniary extent in his reputation or in his good name or credit as a mariner or otherwise. The Court yesterday refused to hear further argument, after a statement of the case by the defendants' counsel, holding that the publishers of a paper were estopped from saying that anything was published without their knowledge and authority. Order affirmed.

A SIXTH-AVE. NICOLSON PAVEMENT ASSESSMENT CASE.

William Remsen brought an action to vacate an assessment on his property for paving Sixth-ave. from Forty-second to Fifty-ninth-sts. with Nicolson pavement. The resolution and ordinance authorizing the work to be done directed that the Nicolson pavement should be laid, and cross-walks laid or relaid at the intersecting streets. It was passed over the Mayor's veto. Nothing was said in the advertisement about proposals for cross-walks or bridge-stones. The only cross-walks laid were parallel to the avenue, and the stone pavement in the space between the rails was allowed to remain. The Railroad Company is required by law to keep the space between the rails and eight feet on either side, in good repair. In the assessment, $1,493 was charged for bridge-stone and $3,486 for collection. Judge Brady, at Special Term, held that the omission to advertise bids for cross-walks was a legal irregularity, and that the charge for collection was erroneous, and he therefore modified the assessment, as far as was in his power, by virtue of the Act of 1870, but refused to vacate it.

The case came before the Supreme Court, General Term, yesterday, on an appeal taken by Mr. Remsen from this order. A. R. Lawrence, for the appellant, argued that the Act of 1870 was not applicable, because it was passed April 25, whereas the petition and order to take proofs in the case were filed March 10; the proofs were all in April 14, and hence, though the argument took place in July, the case arose before the passage of the act. The Court so held, without hearing the appellant further, and reversed the order appealed from.

JUDGE WOODRUFF'S OPINION OF JOHN THOMPSON, THE BANKRUPT.

In the United States Circuit Court, yesterday, in affirming the decree of the Court below granting a discharge in bankruptcy to John Thompson, Judge Woodruff said:

Although I can see elements in the case which give it a to the gravest suspicions; and although looking at the case from a moral point of view the bankrupt has remiss for a short of the duty to the creditors to whom he owed the most by withholding from them the fruits of his labors for the past 13 years, after surrendering their money in specious promises and venture, nevertheless the proof is wanting to satisfy the legal mind of the Court of the existence of such a state of facts as will justify its action upon the clear moral principles which present themselves in this case. While it must be true that the sum of the debtor have by skill acquired in business contributed to the acquisition of about $50,000 cash, it is more than likely that there is a clear understanding, reached by a sort of magnetism, between the creditor and his son, that when he is free from his embarrassment he shall have a large share. If it be the whole of the wealth which, perhaps, in violation of his moral duties is thrown into the hands of his family. Still, the judgment of the Court must always be upon proofs, and this case does not furnish proofs sufficient to warrant the reversal of the order of discharge.

A PRETENDED REVENUE OFFICER IN TROUBLE.

Joseph G. Hurd called, a few weeks ago, upon William Sterneman, a liquor dealer in Second-ave., represented himself as an Internal Revenue officer, and insisted on inspecting Sterneman's books on the ground of suspected frauds. Sterneman asked Hurd to produce the authority under which he acted, and, upon refusing to comply with this request, he was kicked out of the saloon. He then caused Sterneman's arrest on a charge of doing business as a distiller without paying the tax, and the case came on before Commissioner Williams. Three adjournments were had without the appearance of Hurd to substantiate his charge. Sterneman then proved them to be false, and was released. Becoming convinced that the charge was made to extort money from him, and ascertaining that Hurd, though once an Internal Revenue officer, did not hold that position at the time he demanded to see the books, Sterneman caused his arrest on a charge of falsely personating such an officer. Commissioner Davenport committed him yesterday for examination.

CRIMINAL COURTS.

Edward A. Borie, a rectifier of distilled spirits, charged with making false entries in his books, was held, yesterday, by Commissioner Davenport in $5,000 bail for examination. His place of business, No. 10 Cedar-st., was seized.

At the Jefferson Market Police Court, John Smith and John Brady were committed, yesterday, on a charge of stealing coats, worth $50, from the hall of Edward Riley, No. 135 Seventh-ave.... John Fisher, held for stealing a box of lace collars, value $150, from Frederick W. Meyer's store, in Grand-st.

In the Court of General Sessions, before Recorder Hackett, yesterday, John Dickinson was convicted of burglary at Robert Theddon's concert, No. 273 Mulberry, Feb. 5. Sentence postponed.... Frank C. Williams, stealing $49 50 from Julia Lucas. State Prison five years.... Patrick Reilly and Thomas Lestrange were convicted of burglary at the grocery store No. 259 Desbrosses-st., and sent to the State Prison—Reilly for one year and Lestrange for six months.... William Gelbstein, stealing a fur cloak worth $75 from Martin Rosenblum, one year.... John Keiler, stealing $20 from William Dunlap, four years.... August Kesselring pleaded guilty to forging an order on Emerson, Rhodes & Co. for a piece of velveteen. Sentence postponed to next Friday.

CIVIL NOTES.

The case of Abbie S. Chandler agt. Zeno Burnham, reported yesterday, was decided by a verdict of $650 for plaintiff.

In the United States District Court, yesterday, 83,000 cigars, seized on account of a discrepancy between the quantity of material used and the number of cigars manufactured, were condemned by default.

Elbert S. Kip, and his wife, Elizabeth Kip, appeal to the Supreme Court, General Term, from an order made at Special Term, in November last, in a special proceeding taken by the New-York and Harlem Railroad Company, to acquire, under the Acts of 1848, 1854, and 1869, by force, certain lands belonging to the Kips. The Company, in 1868, leased the premises embracing the block between Fourth and Lexington-aves. and Forty-seventh and Forty-eighth-sts., of Mr. Kip for 21 years, and the present petition to acquire the title in fee was filed in November, 1869. Joseph R. Flanders, the referee appointed to take proofs, reported that the land in question was not necessary for any or all of the purposes alleged in the petition; but that the evidence showed that other land belonging to the Company, or which might have been purchased by it, although there was no attempt by it to do so, would be equally available therefor. Judge Cardozo denied a motion to confirm Mr. Flanders's report, but granted an order appointing appraisers, from which order this appeal is taken. Decision reserved.

DECISIONS—APRIL 5.

Supreme Court—Chambers—By Judge Brady.—Kennin agt. Kennin.—Granted.

By Judge Cardozo.—Ide agt. Ide.—Granted. Crocker agt. Crocker.—Granted. In re application of Tuskar.—Granted.

Common Pleas—Special Term—By Judge Loew.—Lutman agt. Adams.—Motion granted on payment of $10 costs, and filing security of costs of suit. Herrick agt. Reid.—Order granted. Connolly agt. Worthington.—Motion denied, with leave to renew upon additional affidavits. Bonner agt. Brown.—Motion denied with costs. Hersig agt. Cook.—Motion to place cause on short calendar granted. Solomon agt. Collins.—Motion denied without costs.

Marine Court—Part I.—By Judge Curtis.—Collenberger agt. Jennings.—Judgment for the plaintiff for $54 75 and costs, with $25 allowance. Goodwin agt. Lorenzberg.—Judgment for the plaintiff for $474 50 and costs, with $25 allowance.

COURT CALENDARS—THIS DAY.

SUPREME COURT—CHAMBERS—BRADY, J.—Opens at 10 a.m. Calendar called at 12.

26..Schmitt agt. Levy.
70..Burnett agt. Burnett.

SUPREME COURT—CIRCUIT—PART I.—VAN BRUNT, J.—Opens at 10½ a. m.

99..Lester agt. N. Y. Guaranty and Indemnity Co.
137..Koehler agt. Frank.
97..Emmet agt. Toledo, Logansport and Ber. R. R. Co.
61..Nolan agt. The Hudson River R. R. Co.
167..Spencer agt. New-Haven Steamboat Co.
399..Fugelsang agt. Goldrick.
371..Shafer agt. Meinhart.
223..Gerling agt. Kobbe.

PART II.—SUTHERLAND, J.—Opens at 10½ a. m.

244..Klink agt. Kelly, Sheriff, &c.
249..Reynolds agt. Kelly, Sheriff, &c.
1330..Terry et al. agt. Connolly, Receiver, &c.
1264..Tallman agt. Wright et al.
192..Bishop agt. Kelly, Sheriff, &c.
209..Brett et al. agt. Stoutler.
1443..Wilson agt. Sylvers et al.
221..Murphy agt. Kelly, Sheriff.
268..Osgood et al., receiver, &c., agt. McKnight.
1262..Kirchmann agt. Lefiard.
90..Horne agt. Herman.
87 (call)..Roder agt. Greenfield.

PART I.—CURTIS, J.—Opens at 10 a.m. Calendar called at 10.

99..Willis agt. Weaver.
253..Rathman agt. Kemp.
231..Chelin agt. Amerman.
243..Fleische agt. Kelly.
204..Willett agt. Figg.
250..Lawton agt. Kiel.
143..Whittemore agt. Patterson.
265..Butterfield agt. Henderson.
271..Morris agt. Wisdan.
277..Akin agt. Weiz.
211..Fessenden agt. Vose.
295..Reed agt. Sherman.

PART II.—BRADY, J.—Opens at 10½ a. m.

244..Cain agt. O'Brien, Sheriff, &c.
66..(B. C.) Wright agt. Bonas.
268..Stubben agt. Drielanski.
1110..(Old) Russell agt. Miner et al.
1080..Chambers agt. Baldwin.
20..McMahon agt. Nat. Ben. Life Ins. Co.
82..Foisay et al. agt. Johnson.
123..The Allaire Works agt. Thomas et al.
1090..Central City Fire Ins. Co. agt. Florida R. R. Co.

SUPREME COURT—GENERAL TERM—INGRAHAM, P. J., BARNARD and CARDOZO, J. J.—Opens at 10½ a. m., in the Board of Supervisors' Room.

Non-enumerated Motion.

16..Meserole agt. Bridge.

Preferred Causes.

95..The People agt. Sullivan.
96..The People agt. Gleimer.
96..Hood agt. Noeland.

Enumerated Motions.

115..Fessenden agt. Swift.
116..Jaulon agt. Butler.
117..Parker agt. Barret.
129..Coggill agt. McAloney.
122..Strang agt. Quigley.
123..Hiestand agt. Otis.
124..Winter agt. Roberts.
125..Paterson agt. Baker.
126..Same agt. Same.
127..Same agt. Roberts.
128..Winters agt. Ba