THE TAMMANY INJUNCTION.

THE RING'S DEFENSE AGAINST THE PEOPLE'S INDICTMENT.

MR O'GORMAN CONCLUDES HIS PLEA—MR. BEACH SPEAKS FOR THE CONTROLLER.

Mr. O'Gorman finished his argument, yesterday, in the case of Foley against the Ring. The public interest had not in the least diminished, as was shown by the expectant but orderly crowd that filled the upper and lower halls of the Court-House, patiently awaiting the opening of the doors. Within five minutes after the room was thrown open every seat was filled as usual. By some unexplained process the opinion of the audience in respect to Judge Barnard's action seemed to have changed since the day before, almost every one thinking the injunction would be dissolved, though the conviction remained as firm as ever that it ought to be continued as the first and most important step toward the breaking up of the Ring.

One gentleman, a prominent Democrat, said, "As far as the Ring is concerned, it is already broken; it was known to many three months ago that these fellows expected a crash to come soon, that they had nearly reached the end of their tether, and were preparing for the end by gathering in everything within reach. It is said that some of them have already left the country, and I should not wonder if this refusal of Connolly's to resign is merely a bluff game, to give the impression that he intends to fight it out, while in reality he is preparing for flight. Do you think those stolen vouchers will ever be returned? No, Sir; I can tell you why they disappeared: because they were simple bills, such as 'Dr. to A. J. Garvey, for plastering, $25,463 58' and contained *no items*. Do you think that Connolly could afford to let the fact go forth to the public that he had paid the city moneys on such bills as that? Of course, the duplicates can be produced, but they are not expected to show the items; and so the public scrutiny will be arrested at the outset, and the chief point of Connolly's defense, as far as those bills are concerned, is rendered nugatory. But all this is nothing; Hall is booming up again, Sweeny has scarcely been attacked, and the Democracy are not ready to give up their control of this city, so look out for Barnard, and thank him for your injunction—when you get it." This seemed to be the general sentiment among the audience, though few could express it so clearly.

Mr. O'Gorman made an energetic effort, and apparently worked himself up into the belief that the complaint was all wrong, and the defense all right; but it will take something more than fine rhetoric to convince the public of this. He was followed by ex-Judge W. A. Beach on behalf of Connolly in an address the opening part of which was sufficiently deliberate and forcible at first, but which soon dwindled down into an irrelevant oration that might have been suitable for the Fourth of July, but was a very weak defense of his "immaculate client." Indeed, it may be said that one portion of his speech was rather an attack on Hall and the other co-defendants than a defense of his own client.

Upon the opening of the Court Mr. O'Gorman resumed his argument as follows:

ARGUMENT OF MR. O'GORMAN.

On yesterday I had the honor of presenting to the Court three points: First, that the plaintiff had no legal capacity to sue, because the section in the act of 1864, under which he claims to have that capacity, was unconstitutional. I next presented to the Court the proposition that as to all past transactions affecting the conduct of the City Government before 1871, the remedy by injunction was wholly inapplicable, that an injunction is not retrospective, that it looks to the future and not to the past. I then took up the present conduct of the City Government, and cited the question as to whether it was required by the Two Per Cent Tax bill, and any other laws in force; that all amounts coming due as against the City and County Government in the year 1871, should be paid out of the avails of taxation in this year. I hope that I convinced your Honor that, as to the amount of $9,000,000, being the amount of bonds of former years falling due in this year, the City was authorized, really bound, to raise that money by the issue of these securities called "consols."

And before I go to that question, let me for one moment correct a misapprehension into which, I think, my friends of the missile pen have fallen, in their report of what I said yesterday. By "my friends of the missile pen," I beg it to be understood that I do not refer to the plaintiff in this case, or to his pens. (Laughter.) I am made to say in some of the newspapers, speaking of the necessity that rested upon you in holding the first positions of responsibility in great public institutions, like moneyed corporations, banks, and so forth, that they should be entirely guided by the confidence they place in their assistants, when only their signature is to be appended. I had no such thing in my thoughts. What I meant to say was that, from mere necessity, from the pressure and turmoil and multiplicity of business, they are often obliged in important occasions to depend upon the trust they naturally place in their subordinates, in the inferior officers who, from their position, may be expected to know more accurately and more intelligently the subject in hand, and who may be naturally supposed to be more specially responsible for that knowledge.

Passing from that, I now proceed to consider the other questions set forth in the complaint, that is as to revenue bonds, as to assessment bonds, and as to bonds issued for which may be called local improvements; however, I refer to those improvements specified in folio 61 of the complaint.

THE RIGHT TO ISSUE BONDS.

As to revenue bonds there, it is scarcely necessary to say to your Honor, they are issuable in advance of taxation; they are to be paid out of the amount raised by taxation, and they, of course, should never exceed the amount properly raised by taxation in any one year. In the present instance, the amount for which these bonds have been issued, "revenue bonds," as stated in the complaint, is $2,700,000. Your Honor sees that the amount legally to be raised by taxation is $23,500,000; so that instead of revenue bonds being issued in excess of the legal and proper amount, they have not been issued to the extent of the legal and proper amount by the sum of $800,000. As far as that matter is concerned, I submit to the Court that the Civic Government, instead of exceeding its powers, has not yet exhausted its powers.

As to assessment bonds, they are issued in advance of amounts not collected by general taxation, but from individuals of the city who are supposed to be benefited by internal improvements. For instance, when it is ordered by the proper authority that a street shall be paved, that a sewer shall be laid, while the work is going on, it is obligatory by law that a certain amount, 30 per cent, I believe, of the cost, is to be paid from time to time to the contractor. No assessment can be laid, or collected, until the work is entirely done, and in order to meet this present difficulty—a pressure for funds—assessment bonds are ordinarily issued in advance of the amount which, when the work is completed, will be collected from the citizens who are properly assessable for the local improvement. As far as that is concerned, there cannot be a suggestion of impropriety on the part of the present civic Government. Assessment bonds are issued by laws running back to 1852. The necessity for them is obvious; the security for their repayment is perfect; and if the real object of this suit is to prevent improper expenditure of the public funds, I can only say that in this instance there is no expenditure of public funds. These amounts are not liable, by taxation, against the people generally; not from what is understood as "taxation," but raised by assessment upon the persons benefited, and payable out of the funds so created.

Now, we pass on to the question as to whether it is legal to issue bonds for the improvements specified in folio 61 of the complaint, to the amount of $5,213,766. In the affidavit of Mr. Storrs, which is in the hands of the Court, there is a statement of all the laws since 1852, I think, whereby these bonds are issuable. It should be remarked that in this law of 1871, called the Two Per Cent act, which my learned friends say prohibit the issuing of any of these bonds, are various letters requiring the issue of bonds for these purposes. For instance: Alterations in the Croton Aqueduct, bonds are ordered to be issued for that, by section 230 of the laws of 1851, passed a few days before the Two Per Cent act; as to the Croton water, improvement bonds are issuable for that, under chapter 290, laws of 1870, and chapter 213, laws of 1871, and chapter 50 of laws of 1871; as to improvements of City parks, bonds are directed to be issued for that purpose by chapter 290 of the laws of 1871; Central Park improvements, bonds are directed to be issued for that by chapter 697, laws of 1867, and chapter 595, laws of 1869; improvement of docks—a most important necessity, which, if properly carried out, will add immensely to the importance and commercial advancement and convenience of the future City of New-York—for that bonds are issuable by chapter 157, Laws of 1870, amended by chapter 574 of Laws of 1871, passed one day before the date of the passage of what is called the Two Per Cent law. Is it possible that the Legislature could have so changed its mind that on one day it directs bonds to be issued for a purpose, and on the very next day says that no bonds shall be issued for that purpose? It says, not distinctly, not in terms, but by a vague, misty, implication. I dismiss that question. For the Fire Telegraph improvements, bonds are required to be issued by chapter 465, again the laws of 1871. I stated to your Honor yesterday that the Legislature of Great Britain never supposes that a repeal by implication shall be effected by an act passed by one Legislature, in one session, when the act sought to be repealed by implication has been passed in the same session. Because it will never be assumed that any Legislature is so fickle, so changeable, as to say a thing one instant and leave it by implication unsaid in the next. Apply that rule in this case. It is a reasonable rule, of as just application here as anywhere else. It does not depend on peculiar laws or customs of one place; but on right reason, universally and at all times applicable to legislative bodies. Apply that rule, and that question is settled. But we are not left to depend upon that alone, if the Court please. Even in this act of 1871, the Two Per Cent act, even directly, provision is made for the issuing of bonds to meet certain expenses. For the completion of the New-York County Court-House, bonds are to be issued.

Mr. Barrett,—I don't object to that.

Mr. O'Gorman,—You don't object to it? It is there. Here is another; let me see if you object to *it*. By section 8, "the Counsel to the Corporation of the City of New-York is authorized and directed to adjust any legal claim of James O'Brien, late Sheriff of the City and County, against the County of New-York, which may be presented to him by leaving the same at his office within ten days after the passage of this act." In that amount, if it had been certified by the Corporation Counsel, bonds also were issuable under this very act of 1871, which my learned friends contend opposes and prevents the issuing of any bonds, or the raising of funds by any means to meet the expenses of the City, unless by the avails of the Two Per Cent taxation.

THE CORNELL CASE.

There are more difficulties in applying these statutes and understanding them than my learned friends, perhaps, have considered. It is somewhat difficult from these statutes to know what is the duty of the civic officials. Let me tell your Honor what occurred within my own cognizance only a few days ago apropos of one of the clauses of the County Court-House. Mr. Cornell, having supplied iron-work for the County Court House, out of his bill—a large bill, some $1,400,000, I believe—found that a balance of $20,000 remained unpaid. A mandamus was applied for before Justice Sutherland, and the question whether it was legally issuable against the Controller or against the Commissioners of the County Court-House was argued by myself, and counsel on the other side of great ability. The phraseology is this:

"For the completion of the New-York County Court-House the sum of $350,000 is hereby authorized to be appropriated, to be expended under the direction and supervision of the Commissioners appointed under Chapter 382 of the Laws of 1870."

I held that the fund applicable for the completion of the County Court House could not be applied to the payment of the past indebtedness accruing in 1869. I held that, if it were so applicable, inasmuch as it should be paid under the supervision and direction of the Commissioners, they had the right, and it was their duty, to examine into the claim before they passed it. I held that, under the phraseology of the law, the Controller could not be compelled to pay the claim of the plaintiff; but that his authority was to put funds in the hands of the Commissioners to pay such claims as in their discretion, and, exercising a quasi judicial authority, he might find to be due. What was the decision of his Honor Judge Sutherland after a most careful, anxious consideration of the case? He did issue that mandamus. He held that the fact that the account was audited in 1869 by the Supervisors was obligatory upon the present Court-House Commissioners, was obligatory upon the present Controller, that they had no right to examine into the items, into the propriety of the payment, and that they were bound to provide for it and to pay it. I say, with all respect, that I differ with the learned Judge; that I have appealed from that decision; and the fact that so much doubt exists upon the amount of responsibility which weighs upon the different city officials in this case should have some effect when we come to think of the past, and condemn men so warmly, so vindictively, as has sometimes been done out of this Court, for actions which they probably believed they did merely in obedience to laws which they did not make, and which they believed they were simply obeying. We are not makers of the law. Your Honor, and I, and all of us are bound to *administer* the laws as well as we can. I am not here to defend any legislation which provides for extravagant expenditure. I am sorry that any such ever was passed by the Legislature of this State. But when we come here we are to apply the laws, not to make them. We are bound not to consider the motives of the Legislature, but merely how the Legislature is to be obeyed; and if I prove to your Honor that the present City Government of New-York is not violating the present laws, but obeying them, I ask what possible claim for an injunction, what possible standing in court upon the merits can the plaintiffs have in this case? Then, as I hold, as to consols, they are issuable to the amount of $9,000,000, and for the improvements specified in folio 61 of the complaint bonds are issuable to beyond $5,000,000.

SOMETHING ABOUT THE "CONSOLS."

It is urged by the other side, or may be, "You have not issued the bonds to the amount of $5,000,000 and upward; but you have issued consols to the amount of $7,500,000, and the proceeds of these consols, instead of applying to the payment of the bonds coming due in 1871, you have applied to improvements that are actually going on in the City of New-York, such as are specified in folio 61." What is the length and breadth of that charge? "There are two funds which you have; one in each pocket; you apply the moneys of one fund to the purposes of the other, having under your control, all the time, the means of making repayment. If we have applied the $5,000,000 proceeds of the consols to the working of improvements in the City of New-York, to the payment of the laborers on Central Park, on the streets, on the various improvements that are going on, to help to give the city pure water, to take care of the various necessities of its sanitary appliances—if we have done that, we can always make repayment by the issue of these bonds, if the issue of these bonds is legal, as I hold it to be.

But let me call the attention of your Honor and the learned counsel on the other side to section 1 of the Act called the Consols Act. (Did they ever attentively read its provisions?)

"It shall be lawful for the Controller of the City of New-York, and he is hereby authorized and empowered to create a public fund to be denominated 'The Consolidated Stock of the City of New-York;' "—which we commonly call consols—"and all stock of the City of New-York hereafter issued in pursuance of laws already passed"—improvement bonds would be issued in compliance with the two laws already passed, and the money of them as depended upon laws heretofore passed—"or which may be hereafter passed, authorizing the issuing of stock or bonds of the City of New-York, shall, unless such laws which may be so hereafter passed otherwise provide, be known as 'Consolidated Stock of the City of New-York;' so that all the stock which is issuable for this purpose is to be called "Consolidated Stock;" and out of that consolidated stock the amount due and owing, or which may become due and owing to laborers and others, may be paid, just as well as by the issue of stock to the amount of $5,000,000, which shall be specially entitled as for that purpose.

But, why did the Controller of the City of New-York, who did the financial agent, apply these $5,000,000, which he took from the proceeds of the consols, to the payment of, and the improvement of, expenses for public improvements? This is the reason: The bonds issued in former years, which were to be payable out of the proceeds of these consols, do not come due until December, 1871. The proceeds of the issuing of consols is in the City Treasury. There is no demand upon it for the payment of bonds until December, 1871; but there is a general demand, from day to day, upon the City Treasury for payment of public improvements that are going on. We do not wait the money to pay off bonds passed in former years, because they are not due yet, and will not be presented; but we do want to pay off the debts that accrue from day to day. By applying that money to that purpose we saved the interest. There is one advantage. Again, it is known to everybody connected with finance that if you throw a quantity of bonds, in what are called "large blocks," upon the market at the same time—bonds of different denominations—it may not be so easy to dispose of them. So it was thought best to present only one class of bonds—what are called "Consols." The public were glad of it; they took these bonds, and they took them at a large premium. Money was saved in the way of interest by that course. It was found necessary to negotiate them; and, even if we come back to strict law, the proceeds of these consols may be as well applied to payment for present improvements, under Section 1 of the Consols Act, as if they were specially named improvement bonds. What remains of the objection? Is there any objection there to the conduct of the City Government which warrants the kind of attacks that seem floating in the air? I speak not as to the past, but to the present conduct of the Government? None.

CAN THE CITY LABORERS BE PAID?

Your Honor suggested that you did not wish it to be understood by this injunction that the City should be prevented from paying those laborers, or paying any other employés of the City. But your Honor has effected that result by your injunction. Your injunction is that no more bonds shall be issued. If no more bonds shall be issued for public improvements to replace the amounts taken from the proceeds of the consols, how is the money to be raised? If it be not legal to issue bonds for public improvements, let them not be issued. But if, as I argue, it is perfectly legal, perfectly obligatory, why, then, stop us from replacing the moneys which we have a right to get, moneys which we, as a matter of expediency, employed from another fund? Your Honor has, by this injunction, stopped the payment of laborers, and I trust that it will be regarded in that light.

Now, my learned friends say, "But no appropriation has been made for this expense." Well, an appropriation *has* been made for this expense. If your Honor will look through the affidavit of Mr. Corson, it shows that appropriations have been made for all these expenses, and it will show that the amounts appropriated have been in many instances under the amounts called for by the various departments and officials who have these matters in hand. I read from 34 of the affidavit of Mr. Corson, setting forth the action of the Board of Apportionment. I find it there resolved by the Board of Apportionment that appropriations shall be made for additional Croton Water Aqueduct stock; for Croton Water Main stock; for IIId District Court-House bonds; for New-York Court-House stock; for, again, New-York Court-House stock; No. 5, Department Parks, improvement bonds; City Parks, improvement fund stock; Museum of Art and Natural History stock; City Improvement stock, and for additional Croton Water stock. These are the appropriations; the Board of Apportionment has the authority to make these appropriations. What means the argument that no appropriations have been made in these cases?

MR. O'GORMAN IN A FOG.

Again, in looking through this complaint, I confess, from time to time, my vision has been unable to pierce the fog. It is a fog. Figures are involved, statements are repeated; it is, one-half of it, a copy of acts that have been passed at different times; it is mostly a recital of errors that may have occurred in years gone by. It is a lengthy document, and that is all that can be said about it. It is a confused document. When I say that, I do not mean, for a moment, to impute to my learned friends on the other side any defect in power to draw an able and distinct pleading, if the case is capable of having an able and distinct pleading; but a confused case always requires a confused pleading, and this case is confused, and the pleading is like it. Can it be argued—it may not be argued, because my learned friends seem to be shifting their ground from time to time, and in such a way that I feel like quoting this old phrase—"*quo rullus unbarlam Proteus tenemo modo*"—in what trip shall we hold this Proteus, all the time changing his face—can it be argued that there is no right to do work payable by assessment because there is no appropriation from it? Why, not so. Let me refer your Honor to the case of Lewis, in which Judge Ingraham made the decision. That was an assessment case. The assessment was attempted to be vacated on the ground that for a local improvement no appropriation had been made. The Judge says: "Another objection is, that no appropriation was made by law before the contract was made." That law was the charter of 1857, and the Two Per Cent Tax bill of 1871 is a copy of the law of 1857, as applicable to 1869. The Court says: "It is a sufficient answer to say that this provision does not apply to cases where the expense is charged upon the owners, and not on the City Treasury; the authority to advance to the contractor is under another statute, and the amount so advanced is refunded to the city, when called from the owners." I refer my learned friends on the other side to the matter of Lewis, page 85, volume 51, Barbour's New-York Reports.

What now is left me to say? You have the affidavit of the Mayor that there has been no expenditure for current expenses beyond the proper amount. You have his affidavit that unless the city has power to issue these bonds for the expenses referred to in section 64 of the complaint, unless the city is provided with means to replace what has been taken from the proceeds of the Consols, immediate embarrassment ensues. And that is precisely what has been done by the injunction you have issued in this case, as I respectfully say, unadvisedly and without proper information tendered to your Honor by the representatives of the plaintiff.

THE FINANCIAL SITUATION HOPEFULLY CONSIDERED.

Now, let me say shortly to your Honor how I think the condition of the city stands financially, as far as this case is concerned, and as far as I am called upon to answer. And let me say that the suggestion made by the learned counsel who so ably addressed the Court yesterday, that anything issued "sets back," and that the whole of the proceedings of the Board of Apportionment should have been set apart for the benefit of him and his client is, as it occurs to me, altogether an improper insinuation. We gave all the information that we were legitimately called upon to give by any issue in this case. As to anything else, it is met by distinct affidavits; and when your Honor considers that this mass of printed matter that we have laid before you, was all prepared in the short interval between the noon, I think, of Friday, and 10 o'clock on Monday morning, I think it but fair to assume that every information that time and industry could possibly procure was procured and laid before the court.

Now, the amount to be raised by taxation is, admittedly, $27,700,000. To this amount the City is authorized to issue revenue bonds. The City has not issued revenue bonds to that amount; the City has not exhausted its power; it has issued revenue bonds to the amount of $23,500,700, leaving in its hands still power to issue bonds on that account to the amount of $800,300. The City has power to issue consols to the amount of $9,000,000; the City has issued consols to the amount of $7,500,000, leaving a balance, which it still has power to issue, of $1,500,000, which power is still unexhausted. The City has power to issue bonds for improvement purposes, calling for special bonds for improvements, or calling for consols, under section 1 of the Consols act, to the amount of $5,213,766, which amount it has not issued. To this amount the proceeds of consols have been applied, leaving a balance to be applied, in hand, which balance is applicable to the bonds coming due in December, 1871, of $2,513,766. So that if I be right (and if I am wrong your Honor will correct me, and I shall be obliged for your correction) at this moment the City has the right to issue these bonds, the balance of the revenue bonds short of the amount to be raised by taxation $5,000,000, and the balance of the consols that have been issued short of $9,000,000, the sum of $1,500,000. All of which amounts to $2,500,000, which the City still has the legal right to issue. Again I say it has the right to issue improvement bonds, either to replace the amount taken from the proceeds of consols, or, under the name of consols, under Section 1 of the Consols act, making, in all, $2,500,000, unexhausted power on the part of the City authorities, for which they have a right to issue bonds.

If that be so, let it never be said again here, let it never be made more vague and unsubstantial than due be made in a court of justice, let it never be said, in my view of the law is correct, that the bonds of the City of New-York are not as good a security as the bonds of these United States, or any other city or nation on this broad earth; let no suspicion be uttered against the credit of this City; it is a sufficient crime; it is dangerous to the prosperity, to the good order, to the quiet of society. It is a suspicion that no man ought ever to utter without unassailable grounds for his belief that he is warranted in it. These bonds are held by rich men and by poor men. In these bonds the savings of the artisans all through this State are invested, as the most favored security. In these bonds the widows and men of this State, the men who by years of industry have accumulated honorable wealth, have invested their money. I ask of the men—the rich man and the poor man, the man dwelling in Madison-avenue, and the man dwelling in his humble mansion in the Five Points—is this suspicion be not founded in fact, I ask them all to come up in defense of the City, in defense of themselves, in defense of their own property, in defense of their children and their children, and brand the accusation as a lie, malignant, and contemptible.

MORE ABOUT MR. FOLEY.

If the Court please, I have nearly done. I have endeavored to lay before your Honor the law as I understand it. Upon the facts of this case, applying to the conduct of some of the defendants, your Honor will be addressed by other counsel, whose more brilliant intellects will illuminate the spots and points of this case which I have been only able faintly to light up. They will supply much that I have omitted. But let me say this before I conclude, I argued first, to your Honor, that the plaintiff had no legal standing in Court. I argued it because it was my professional duty not to keep the Court in ignorance on any legal point that I thought struck at the very heart of this action. I now say to your Honor this, on behalf of the Commonality of the City of New-York, for whom I appear, as elected me as their representative: I now say to your Honor, be not altogether governed by that point if you think, on examining the law of this case, that there is anything now going on wrong on the part of the City Government or, if wrong its finance, let the point that goes to the jurisdiction stand over for another time, and plot at the City Government. I ask you to do so. My learned friends on the other side ask you to do so; but not with one-half the energy with which it is my duty to press the appeal. It is the conviction upon my heart that this suit of John Foley against the City officials was a real suit—if I could put could leave in his real motives—I should feel happier in dealing with this argument. But I cannot shut my mind from the idea that it has ulterior objects, that it has behind it and pressing it forward other than Mr. Foley, whose objects may not be as pure as I desire, or, at all events, as his cause, if he be, but a few hours ago, objects with which I can have no sympathy. There may be danger in these objects, as far as this suit is concerned, but out of this I do not charge the Power of Judge. Let the friends of John Foley disappear from this suit, regard it merely as an application on the part of a citizen asking that wrong is being done in the City Government, asking your Honor to interpose, and if you find that wrong is done, I ask you, on the part of the City Government, to interpose against any official, or against any act that you think is unjust or improper.

Now, if the Court please, I have done. I have submitted my views, and I urge upon the Court no reasons for its judgment more than the law and the facts as they appear. I can only say to the Court that, as in the past so in the present, I only ask that justice be done, as I have ever asked it every Judge, so I say that he shall do right between the plaintiff and the defendant in the suit. As to one of the defendants, I did not I have made no allusion to his case—I speak of the President of the Department of Public Parks.

Judge Barnard—There is no charge whatever, or any kind or description, either actual or hypothetic, or in any way, shape or manner, alleged against him.

ARGUMENT OF MR. BEACH.

The exhaustive argument just delivered by my distinguished associate leaves me but very little to do in this case. Indeed, Sir, I can be but a gleaner in the field which he has so successfully reaped, and, I trust, gathering golden harvest. And after the illumination shed upon this case by my friend's effort, I cannot perceive that there are left to me any dark spots about it needing light. But the incidental and collateral matters connected with this litigation shadowed forth in the complaint and bubbling in the public mind within and without this chamber, the somewhat exceptional and peculiar attitude occupied by my more immediate client in regard to the transactions involved in this controversy, will justify me, I trust, in the mind of your Honor for pursuing an argument rather more discursive and popular than and ordinary circumstances would be deemed in perfect taste. And, although my friend has so critically and ably examined the legal mode as well as many of the collateral questions which are presented upon this complaint, it is possible that in considering the same in aspects presented in a homelier phrase, and with no pretensions to emulation of the eloquence of my learned associate, I may possibly say something which will deserve at least slight attention.

And before we drift further, Sir, upon the sea of this debate, it seems to me desirable to ascertain the position we occupy and the course we are to follow. If I am to judge from the argument presented upon the opening of this case, I should suppose I was before a High Court of Impeachment, where all the official acts of these defendants, within the scope of the specifications, were subject to free and liberal examination; or that I stood before a criminal court, and was answering to an indictment against these defendants, where all their official acts were the subject of scrutiny, and where the motives and purposes which guided those acts were to be approved or condemned by the judgment of an intelligent jury. This is a mistake, Sir. This is a civil action. I am before a civil Court to answer a private action for private damages.

THE COURT APOSTROPHIZED.

I am in a court governed by established forms and guided by immutable and unerring principles, and I claim to-day the benefit of those forms and the shield of those principles. I hold my learned friends to-day to the pursuit of those legal and established forms, and I ask from your Honor the administration of justice in obedience to recognized and fundamental principles of law by which you are governed. Sir, it was said by an ancient and distinguished French philosopher that the honor and fortunes and liberty and laws of the citizens of a free community were enshrined in the forms established for the administration of law; and he said, further, that the more multiplied and intricate those forms, the more secure was justice and the privileges of the community. It is not safe, your Honor, to abandon the forms of justice. They give security to the citizen; they give deliberation in the administration of the law; they give ample opportunity for defense, and for the quieting of that popular disturbance and tumult which sometimes disarrange the administration of the law. And what is the relief demanded? It asks an injunction restraining these defendants from the further execution of the debt against the City of New-York, and in so far as the allegations of this complaint are pertinent to that relief; so far as they aver facts which justify in the eye of the law the granting of that relief, it is the duty of these defendants—a duty which they owe to their official position and private vindication—to meet those averments of facts with a full and complete negative. But is it necessary for me to remind your Honor and my learned friends that, in so far as this complaint is cumbered with immaterial averments—so far as it contains general, indefinite allegations of bad faith unsustained by a specification of facts—that neither law nor justice demands an answer? Am I to remind your Honor of the familiar principles upon which the process and law of injunction rest—that it is not enough by vague and indefinite allegation, by gross and general imputation of bad faith and fraud; not enough by averments founded upon information and belief, and unsubstantiated by collateral affidavits to call upon the Court to issue this high process—a prerogative of writ failing summarily upon the interests of the citizen, and staining the actions of the official representatives of law and government?

It seems to be thought, may it please your Honor, that if the confusion and clamor which batters against this temple can be introduced into a complaint and into an argument before a court of law, it is enough to set on foot the repressive and vindictive power of the Court. No! may it please your Honor, the administration of justice is slow, deliberate, and sure. It walks with an impartial, calm, and majestic step toward its object, and is not hurried into injustice by popular tumult and indignation. I don't think, sir, I can better pursue this argument than to follow the example of my learned adversary and take the history of the case as it is presented on the face of the complaint, and see how far, in the judgment of the law, in the judgment of the professional mind—nay, in that judgment which is instinct in the minds of the people looking to fairness and fair play—this complaint deserves an answer, and how important and condemnatory may be its allegations, and however explicit and full has been the reply we have furnished.

"A HERITAGE OF DEBT."

The opening averments of this complaint, if it please the Court, are not contested. They consist of a narrative of laws and extracts from them regulating the government of the city. The fifth subdivision of this complaint is devoted to an exhibition of the extent of the municipal indebtedness of this city, and my friends, with something of triumph, have said that these allegations are unanswered. As to the mere numerals contained in this section, there is no denial, but my friends and your Honor will remember that in the able and elaborate exposition of the condition of the city finances presented in the answer and in the affidavit of its head, it is conclusively shown that this aggregate of debt is by no means referable to the action of the present City Government. As has been said by my learned friend, the officials of this city were inducted into power burdened with a heritage of debt. They are to-day not called upon to answer the cause of that indebtedness or the motives under which it occurred. The citizens and Legislature felt the inaccuracies and difficulties of the past system and its administration. They inaugurated under the new charter a new system. They imposed upon the officers it created, specific obligations and duties, and among them was the assumption of the past debt of the city. They were commanded and compelled to pay that debt. In so far as it was a created and existing liability against the City of New-York, there was no escape from that duty, and in this aggregation of indebtedness is included that large amount which swells its proportions and which has been largely instrumental in exciting the force of the indignation which prevails in this city. Why should they be chargeable with the responsibility of this debt? Why should they be condemned because the Legislature of this State, without regard to the legality of that indebtedness, regarding only the honor and eminence of this Metropolis of the Union, demanded that this debt should be paid by the city? that those who had trusted to the honor of its officials, that those who had rendered their services and expended their capital at the command of the authorized representatives of the city, that they should be turned from its Treasury unanswered and penniless? Who imperils the reputation of that debt? Who demands that the City of New-York, with its abundant and exhaustive—I had almost said inexhaustible—resources, shall refuse to pay to the laborer and the capitalist the debt which has contributed to its enrichment and honor; that those, Sir, who carp against this debt, who cry aloud at its magnitude, who seem to see and fear in the future some reproach upon the credit of the City of New-York, let them consider, when they pursue with the vindictive severity which characterizes this complaint, and the motives which inspire it, let them consider that the City of New-York has done nothing but pay its indebtedness, and that the present officials have no part of connection with this creation. Therefore, Sir, it was not deemed important to contradict, as we could not contradict, the extent of the indebtedness, nor was it deemed important, nor would it have been fully legitimate for the defendants in this case to enter into an examination and vindication of the items which compose that indebtedness. The vindication of the past, Sir, does not rest on these defendants.

No matter how far they may individually and personally have participated in the creation of that debt; nevertheless, in the judgment of law, and in answer to the legal action, they are not called upon to justify that indebtedness. And now, Sir, I do not excuse the remark to indulge an opinion one way or the other as to the justice of the creation, as to the propriety of this debt. I leave that to an occasion when an examination of those bodies will be legally legitimate.

Well, Sir, there follow an allegation exhibiting what is thought the prodigality in this city under the administration of the defendant, Mayor Hall, and it is said that the debt has become six times as great during his brief administration. The fallacy of that allegation is obvious when I have already said to the court. The portion of it here be positively in the amount of the debt, is made clearly upon the principles, but are we to forget the condition of things in which we live? Does not every gentleman know that within the past year there has accrued to this City an amount of expenditure imperiously unavoidable in the past? And is there a gentleman of this audience, or citizen of this municipality, who does not recognize the necessity and approve of that expenditure? Are we forgetful of the character of the city in which we live? Do we not recognize the importance and prominence, its present commercial grandeur, its future incomparable prosperity? Are there any in this city who regard the lavish expenditures for its decoration, its magnificent streets, its beautiful Central Park, in which the rich from their palaces, and the poor man from his hovel, can all courge, gate, and in republican simplicity, in the pursuit of health and enjoyment, wander among your broad thoroughfares, and breathe the fresh and inspiring air of heaven and your noble parks?

ENORMOUS EXPENDITURES DEFENDED.

Does this plaintiff—is those who stand behind him—desire that these monuments of the greatness and liberality of your city shall be abolished—that any of those progressive works which are now tending to complete accomplishment, and which contribute to all these charitable, healthful, and magnanimous purposes shall be stayed in their mission, and compel to the imperfect and the decaying grandeur of your city? And yet, I ask, Sir, this plaintiff looks, and asks the defendants to look, to this result if he is granted, this Court will bring upon the city.

Now, I admit, Sir, that the volume of cost of these enterprises, looking at the mere figures, disregarding the objects, and the benefits, and the honor they are intended to lend will confer, seem enormous, almost frightful. But, Sir, we live in an age of great enterprises. In the first generation the Republic established, they would stand aghast at their magnificence and expense. Why, some thought the country had exhausted its resources for a generation, and the committee of two centuries would meet a nation paralyzed. Who of the past generation dreamed that the country would be traversed by a railroad, and the committee of two centuries would meet a nation plain? Who of the past generation dreamed that the country would be traversed by a network of telegraphs, and that from nation to nation and from continent to continent would be borne the pulsations and daily life and thought of the world? Yes, Sir, there are citizens of this community who remember the dimensions and the character of the City of New-York within their lives, and who thought not that in their generation its dimensions would have been so extended; that the produce of this art and wealth would have been so numerous, and should have risen to its present position among the cities of the world. Why, when we estimate the extent of the expenditures and debt of this city, when we measure them by the spirit of progress which animates the day, how we compare them with the most efficient of the cities and other communities, these expenditures and that debt dwarf into contemptible insignificance.

THE CITY'S CREDIT.

And the credit of New-York is even distinguished! Aye; we fear there will be a panic in regard to the bonds. The City of New-York will no longer be able to raise if municipal resources as in the past. It will be dishonored in the world of finance and commerce. Its credit dishonored, Sir! Why, the answer of Mayor Hall in this case exhibits to this Court that the value of the municipal property of the city is over $200,000,000—all pledged to the redemption of its credit and debt—off set as an abundant security for its loan, and behind that, Sir, stands the almost limitless responsibility of its citizens. Aye, Sir, and behind that, prouder and stronger than all, stands the honorable and unstained honor of its citizens. And gentlemen tell me that the credit of the City of New-York is to be successfully assailed, aye, and that Controller Connolly is destroying it. Why, Sir, it is uncontradicted upon these papers that even while this litigation is proceeding, and while this tumultuous clamor beats the credit of the city and the action of its officers, its bonds are current with the capitalists of the city and of the world *at a premium*. Now, may it please your Honor in the face of these considerations and facts, resting confident upon the bountiful resources of this City, what means this raging against magnanimous liberality in the acts of our City officials toward the embellishment of the City, and the health and comfort of its citizens, and how long, in view of these considerations can this fear about the future beset the minds of the people?

But to come to a more technical consideration of this feature of the complaint. What has all this to do with the right of the plaintiff to an injunction—an injunction to be granted upon a bill *qui timet*; an injunction which is to restrain acts in the future, which cannot react, as my friend aptly says, upon the past? Granting all allegations in regard to the magnitude and impropriety of the debt, grant that it was created in corruption and fraud—nay, grant that its creation was due to these defendants themselves—what has that to do with the merits of this litigation, and wherein will that justify your Honor in granting an injunction against the exercise of the legal jurisdiction and the legal powers of the officers of this city. It may serve to reflect popular sentiment, to create prejudices and antipathies, which may injuriously and unjustly affect the judgment to be pronounced. But, in the mind of this Court, however they may gratify the morbid desire for accusation and obloquy as to the city officers prevailing elsewhere, charges and allegations of this character will fall powerless.

THE CONTRACTS OF TWEED & CO.

Now, Sir, I pass to the seventh subdivision of the complaint, and after the statement of this debt, after the allegation that it is attributable to the wrongful acts of the City officials, particularly those of the Mayor, it charges that the laws have been systematically disregarded. It charges that, in defiance of the law, both general and special, which forbids an officer to be connected, directly or indirectly, pecuniarily with the contracts or expenditures on the part of the Government, that Mayor Hall and others of these defendants were connected with some private enterprises, some firms and establishments, newspapers, printing establishments, and others, by which, by complicity, as between the ostensible proprietors and themselves they have amassed fortunes.

That allegation, Sir, we call impertinent and immaterial. Grant it in its full breadth, if its ignominious application to each of these defendants, it furnishes no ground for an injunction in this case.

But, Sir, we have not contented ourselves with a legal answer to this complaint. In the present condition of things we have not deemed it wise or politic on the part of our clients that they should simply assume a strict legal attitude before this Court, and answer only the material averments in this complaint. As to each and all of them, and especially so far as my immediate client is concerned, each and every allegation has been repelled with a particularity and directness which admits of no suspicion and contradiction, and equally so, equally decisive and imperative, is the denial of each of the defendants, and these denials are fortified by the collateral affidavits of the true proprietors of these establishments. Well, my friend takes exception to the answer of Mr. Tweed, that it is not precise, sufficiently detailed; that when these gentlemen come into court with an immaterial charge against Mr. Tweed it is not sufficient for him to meet it with an indirect though ample denial of the allegations, but that he should spread upon the records of the court, the evidences of the truth of that denial; forgetting the rule of pleading—the rule of propriety that a party may never properly plead evidence, but must state the result of that evidence, pandering to the morbid and unjust sentiment which stalks through these streets; these gentlemen say, you have evaded the allegations. We question the affidavit of Mr. Tweed, we question the sworn denial of Mr. Connolly and Mayor Hall, that they have no connection and never derived any pecuniary advantage from these establishments, and we require you to present the evidence on which your denial rests." I need not say to your Honor that such an answer would be objectionable, and I think I may be justified in saying that such a demand from the plaintiff in this case under those circumstances is unfair, and, in the expressive phrase of my associate, "malignant." For what is the rule in equity and in regard to injunction bills? Why, first, that upon express and explicit declaration founded upon knowledge that facts justifying an injunction shall be charged; and, second, if the defendant comes into court with a full and complete denial upon his own oath, where the complaint is not sustained by collateral affidavits, it is an abundant and complete answer to the demand for an injunction. All that we were called upon to do was to deny the equity of the bill, and your Honor is familiar enough with the practice which justifies the defendant upon an answer denying the whole equity bill to demand the dissolution of an ex parte injunction. Well, Sir, we have complied with that rule, and pursuing the honorable city of these allegations, giving them the materiality which they want, still they are fully and amply met by a broad and unequivocal specific denial. Enumerating the amounts which have been expended in 1869 and in 1870, upon page 9th for advertising, printing and stationery, the complaint proceeds to allege while the sums paid and claimed for advertising, &c., during said years, principally at *The New-York Transcript* and other offices, as the plaintiff is informed and believes, equal the sum of $7,000,000, and the amount of claims not paid exceeds $3,000,000. Well, Sir, my friends say that this allegation is unanswered; that while the appropriations