CONVICTION FOR LIBEL.

THE COURT OF APPEALS AFFIRMS THAT OF WILLIAM F. SHERLOCK.

Opinion of the Court of Last Resort Confirming the Finding Against the Editor of the "Unionist," Who Libelled a Foreman of "The Sun's" Composing Room.

In June, 1900, the first conviction for criminal libel which had been obtained in this county since the conviction of a writer for libelling the late August Belmont seventeen years earlier was recorded of one William F. Sherlock in the Court of General Sessions before Judge Cowing and a jury.

Sherlock obtained from Mr. Justice Bischoff, Jr., a certificate of reasonable doubt and took an appeal to the Appellate Division, where the conviction was unanimously affirmed. His counsel then obtained a certificate from Chief Judge Parker of the Court of Appeals and took an appeal to that court, where the case was argued on Jan. 31.

The court of last resort on Tuesday unanimously affirmed the conviction of Sherlock in the following opinion rendered by Judge Cullen:

Court of Appeals. The People of the State of New York, Respondent, vs. No. 77, against William F. Sherlock, Appellant. W. V. B. P., M. C. All of the Judges concurred in this opinion. Appeal from a judgment of the Appellate Division of the First Department affirming a judgment of the Court of General Sessions of the Peace of the City and County of New York on a conviction of libel. Benjamin Patterson and George W. Miller, for appellant. Franklin Bartlett for respondent.

CULLEN, J.: The appellant was indicted for having published in a newspaper called the *Unionist* a false and malicious libel on Charles M. Clark, then in the employ of one of the large daily papers in the city of New York. At the time of the offence there was a "labor war" between the organized or "union" printers and the newspaper on which Clark worked. The material part of the indictment charged in substance that Clark with having, when foreman of the Providence *Journal*, made false entries in the payroll of the paper and appropriated the money represented by such entries. The *Unionist* was published as the representative or organ of the labor unions, and copies of the paper were publicly exposed for sale throughout the city of New York. On the trial the appellant admitted his responsibility for the libelous publication and sought to justify and excuse it. He was convicted of the offence charged against him and that conviction has been affirmed by the Appellate Division of the Supreme Court.

The first ground on which it is sought to reverse the judgment below is that the trial court in its charge invaded the province of the jury, which, under section 8, Article I. of the Constitution is, in criminal prosecutions or informations for libel, authorized to determine the law and the fact. We are of opinion that the question is not properly before us, because no exception was taken on the trial to the charge of the court. By section 527 of the code of Criminal Procedure the Appellate Division is authorized to grant a new trial in a criminal case when satisfied "that the verdict against the prisoner is against the weight of evidence, against the law, or that justice requires it, whether exceptions have been taken in the court below or not." But by section 528, which regulates appeals to this court, the broad power given to the Appellate Division of the Supreme Court is restricted upon appeal only where the judgment is of death. Another cases we can take notice only of legal errors appearing in the record or raised by exception on the trial (People vs. Driscoll, 107 N. Y., 414; same vs. Lyons, 110 N. Y., 618; same vs. Leonardi, 143 N. Y., 360). The fact that the alleged error involves a constitutional question does not increase our power of review, which is limited by the constitution itself and legislation enacted in pursuance of it. The case is not analogous to that of Cancemi vs. The People (18 N. Y., 128). There the record showed on its face that the verdict was rendered by only eleven jurors. It was held that such a number did not constitute a legal jury, and therefore there was no jurisdiction to render the verdict. In Mosquito vs. The People (45 N. Y.) it the record failed to show that the prisoner was asked what he had to say why judgment should not be pronounced against him. It was held that the defect was fatal and that judgment could not be awarded until the defendant had been given an opportunity to move in arrest. In this case, however, the record shows jurisdiction in the court and regularity in its proceedings. Erroneous rulings of the trial court on the admission of evidence or instructions to the jury constitute legal error only when exceptions have been taken.

But if we may look at the charge of the trial judge we find no error there. While the court stated to the jury that the laws in force were several times distinctly instructed that under the Constitution it was the judge alike of the law and the fact. It is not necessary to review the struggle that long prevailed between owners of newspapers and their respective rights in prosecutions for libel, the history of the contest is common learning of the profession. The controversy was settled in this State by the enactment of Charles 1. of the Laws of 1805, which provided that the jury should have the right to determine the law and the fact "under the direction of the Court in like manner as in other criminal cases; and that the truth of the libel when published with good motives and for justifiable ends shall be a justification of the charge. These provisions of the statute have been incorporated in the constitutions of 1821 and 1846 except that the right of the jury to determine both the law and the fact has been made unqualified. At the time of the enactment of the statute referred to and of the adoption of the constitution of 1821 the doctrine that in criminal cases the jury had the right as well as the power to determine both the law and the facts, was not universally accepted, as it is to a very great extent. That seems to have been the view of Chancellor Kent (see People vs. Croswell, 3 Johnson's cases, 336). The law was finally settled otherwise in this State in Duffy vs. The People (26 N. Y., 588), where it was held that in criminal cases (except prosecutions for libel) as well as in civil cases the jury is bound to take the law from the court. The question was not authoritatively determined in the Federal tribunals until the recent decision of the Supreme Court of the United States in Sparf and Hansen vs. United states (156 U. S., 51). In the opinions delivered in that case is to be found a most exhaustive view of the reported cases occurring early in the last century. An analysis of the reports of those cases shows that even those Judges who held most firmly the doctrine that the jury was the final judge of the law as well as of the facts never deemed it inconsistent with that doctrine to declare to the jury their own views of the law. The learned Judge who wrote for the majority in the Sparf and Hansen case, holding that the old rule still prevailed, says: "To as let them (jurors) in the decision of the law they receive the instructions of the Judge, but they are not obliged to follow his instructions." The Judge who wrote for the minority in discussing the practice in many of the States, in some by express Constitutional enactment. Yet in all these states, so far as our research goes, it is the practice of the trial judge to state his opinion of the law, at the same time instructing the jury that the final determination is with them. The charge of the learned trial Court stated the law applicable to the case with entire correctness.

There is but one exception which it is necessary for us to notice. The appellant was permitted the greatest latitude in his attempt to justify the charge of dishonesty made against the prosecutor. No proof was offered upon which sustained his hope. The defendant himself testified fully to his plea and intent in publishing the libel. He was then asked if at the time of its publication he believed the truth of the article. The question was objected to and was excluded. The defendant excepted. The claimed that this ruling was erroneous and that the defendant was entitled to the benefit of the excluded evidence. In discussing this question it is to be premised that the function of the court in ruling on the admission of evidence in no way affected or limited by the consideration that the jury is to determine the law and the fact when the cause is finally submitted to it. The question of the competency of evidence offered by either party to the dispute is addressed to the court in the same manner as in other trials. In the dissenting opinion in Sparf vs. United States (supra) it is said: "The question whether particular evidence shall be admitted or rejected is to be decided by the court before the evidence can be submitted to the jury at all and must be so decided by the court and this is a question of law. The question whether the proposed evidence is, or is not, material, is a question of law. So also is the question whether the fact to be established by the evidence, if admitted, is, or is not, such a fact as will, if established, be a justification of the charge." Upon this question of fact as whether doing the acts were made under immediate intimidation, fear of death or whether a sane person of ordinary intelligence and firmness, whether such foundation has been laid for the admission of the defendant's voluntary testimony, whether the proposed evidence of character affecting witnesses to testify against Knapp (in Pickering, Commonwealth vs. Knapp) ought to be admitted, it was held that although the jury have the power and it is their duty to decide the facts in the case which are involved in the final question of the guilt or innocence of the prisoner, yet when questions of law arise in the arrangement of the prisoner or the progress of the trial in relation to the admission of evidence, they must be decided by the Court and may not afterward be reviewed by the jury." (To the same effect see Thibaut vs. Sessions, 101 Mich.) The belief of the defendant in the truth of the article was not admissible in justification of the libel. This was the rule at common law and neither the statute of 1805 nor the Constitutional provisions have changed it. In Commonwealth vs. Snelling (15 Pickering, 337), under a Massachusetts statute substantially similar to our own, the trial Court ruled that the belief of the defendant that the facts were true was not admissible in evidence to justify the prosecution of malice. This instruction was held proper. The Court said: "But how is this defence (justification) to be made? By proof of the truth of the matter charged as libellous; not his belief of the truth, not his information nor the strength of the authority upon which such belief was taken up. No question can arise as to the good motive or justifiable end until the truth is proved. * * * It is not necessary to render an act malicious that the party be actuated by a feeling of hatred or ill-will toward the individual * * * but if in pursuing that design he wilfully inflicts a wrong on others which is not warranted by law such act is malicious." Had the defendant given evidence tending to prove the truth of the libellous charge a different question would be presented. To establish a justification in a criminal prosecution for libel it is necessary not only to show the truth of the libel, but also that it was published "with good motives and for justifiable ends." It is proper, therefore, that a defendant after having given evidence as to the truth of the charge made by him, should be allowed to testify to his belief in the truth as bearing on the question of his motive, as the truth alone is not a defence. But where no proof of the truth of the charge is given the defendant's belief can operate only in mitigation of punishment and not as a defence, except in the case of excusable libel.

By section 244 of the Penal Code, "The publication is excused when it is honestly made in the belief of its truth and upon reasonable grounds for this belief, and consists of fair comments upon the conduct of a person in respect of public affairs, or upon a thing which the proprietor thereof offers or explains to the public." This provision seems to be entirely new, and I cannot find its history prior to the enactment of the Penal Code in 18[illegible]. It was not in the code as it was reported by the codifiers in 1850. It does not deal with the cases of privileged communications, for they are covered by section 253, and it was always a good defence to a prosecution for libel that the communication was privileged. But whether a false charge is excusable under the Penal Code "upon the belief of the defendant and the grounds for such belief, but also on the subject matter of the publication. It must consist "of fair comments upon the conduct of a person in respect of public affairs, or upon a thing which the proprietor thereof offers or explains to the public." The pecuniary honesty of Clark as foreman of a newspaper office was in no sense a public affair. It is not necessary for us now to enumerate the cases which would fall within this provision. It is sufficient to say that the one before us does not. The Constitution enacts that the truth of a publication, when made with good motives and for justifiable ends, shall be a defence. The legislative enactment goes a step further and provides that even if the publication is not true, if made in belief of its truth and upon reasonable grounds for that belief, it shall also be a defence, but not in all cases only in cases of the conduct of public affairs or of things offered or explained to the public. As this publication did not consist of such comments, belief in its truth did not tend to excuse the defendant.

Nor was the evidence admissible on the question of good faith in the publication of a privileged communication. The defendant's paper was for sale and circulation among the public generally. The public had no interest within the meaning of the section of the code in the subject of Clark's acts while a foreman of the Providence newspaper. In no view of the case and the evidence was the excluded testimony competent.

The judgment appealed from should be affirmed.

DIVORCE MILL IN ROCHESTER.

The Grand Jury Expected to Return Indictments To-Day.

ROCHESTER, March 14.—The Grand Jury has uncovered a divorce mill in Rochester. About three years ago Justice Davy appointed a young lawyer as referee in an action for divorce entitled Warburton against Warburton. Leslie W. Hulburt, attorney for the plaintiff, called James Cosgrove to the stand. He testified that he lived in New York city in the same boarding house with Mrs. Warburton. One evening he said he went to Mrs. Warburton's room to get a needle and thread and saw a man there who was not Warburton. The referee thought the case deserved a little quiet investigation. He found that Cosgrove's right name was McDonald and that the place where he claimed to live on Genesee street was a vacant lot. Warburton was not known at the house where Cosgrove said he lived. The referee refused to grant a decree and while the case was pending here Hulburt transferred the action to Buffalo, got another referee appointed and obtained a divorce.

This case, with others, was laid before the present Grand Jury. It is said to be discovery was made that half a dozen decrees had been obtained for clients of Hulburt by perjured testimony. An attempt was made to indict Hulburt for subornation of perjury, and charges were made against several of the witnesses. The Grand Jury is expected to present sealed indictments against them all to-morrow. Bail of the men against whom an indictment is to be reported was consequent in the various cases. He went by several names, and deported himself to suit the case in which his services were required. It is said that he charged large sums for his testimony and that his smooth manner almost defied detection.

VISITORS AT THE WHARVES.

Surveyor Croft Explains the Order Restricting Privileges on the Arrival of Steamships.

Silas C. Croft, Surveyor of the Port, issued a statement yesterday explaining why the practice of granting admission to the baggage enclosure of the various steamship wharves has been discontinued by the customs authorities. The statement says:

"This privilege was used or abused to such an extent that it became almost impossible for the inspectors to perform their work properly, besides endangering the revenue. The countersigning of these cards (at the Surveyor's office) was there" rediscontinued. This, however, in no way affects the rule adopted by the steamship companies granting cards of admission to the piers to any one they may see fit, but they were requested by this office to limit such permission to those having legitimate business upon their piers. Visitors are only excluded from the enclosure where the examination is being held, but passenger arriving are not restricted in their movements either within or without this enclosure."

To further expedite matters, representatives of transportation companies and baggage expressmen are permitted within the lines in order that they may promptly remove the luggage of passengers after its examination. Mr. Croft says that the methods employed "contemplate solely promptness and safety."

FUNERAL OF MAJOR ABRAMS.

More Than 700 Men in the Line of March to the Church of the Puritans.

The funeral of Major James C. Abrams, senior Major of the Seventh Regiment and one of the oldest officers in point of service in the National Guard of this State, who died last Sunday at Schenectady, was held from the Church of the Puritans at Fifth avenue and 130th street. The funeral was a military one. The Seventh Regiment with Col. Daniel Appleton in command marched from the elevated station in 125th street to Major Abrams's late residence at 146 West 130th street. The body was taken from the house as soon as the regiment reached there and placed on a gun caisson for the march to the church. There were more than 700 men in the line. The First Battalion, Major Abrams's late command, in full uniform, acted as the guard of honor. The battalion was in command of Major Conover. Col. Appleton and his staff, Brig.-Gen. George Moore Smith and his staff, and Col. Duffy of the Sixty-ninth Regiment and some of the members of his staff walked after the caisson.

The church was filled with floral offerings, the most conspicuous of which was a wreath standing six feet high from Company G. The services were conducted by the Rev. Charles J. Young. The body was taken by special train to Kensico Cemetery, where it was placed in a receiving vault.

BURNING CAR RUN TO FIRE HOUSE.

Kansas City Gripman's Quick Wit Saved the Car From Destruction.

KANSAS CITY, Mo., March 14.—Fire Company No. 5 had a new experience this morning. A fire was brought right to the engine house to put out.

A Troost avenue car became ignited from an overheated stove. The passengers got out in a hurry, and the car then fought the flames, but could not subdue them. All at once the gripman had a brilliant idea. No. 5 fire house was only four blocks away, and the gripman started the car for the fire house at full speed.

At the fire house the gripman pulled up short and shouted "Fire." The firemen put out the flames in short order.

FATAL TEST OF LIFEBOAT.

BUILT TO RIGHT ITSELF PROMPTLY IF UPSET, BUT DIDN'T.

Thirteen Men Sat on One Gunwale Merely to Careen It, But It Popped Over—All But One of the Thirteen Rescued by Those on Shore—After a Time the Boat Righted.

A so-called self-righting lifeboat which was being tested by United States government officials in the East River yesterday tipped over with thirteen men in it and failing to right itself once all the thirteen was drowned.

It was a 35-foot boat built by the American Motor Company, which has an office at 32 Broadway. The Government has been making tests of several patent lifeboats for use in the army transport service and this company sent one of its boats over to Pier 22 on Wednesday to have it tested. Capt. A. D. Northrup, superintendent of the marine department of the transport service has had charge of these experiments and at 1 o'clock yesterday afternoon he ordered the new boat tested in the slip alongside the Government pier. The boat looks very much like an ordinary lifeboat, the innovation being a number of air tanks of large size [illegible] and smaller ones in the bottom, which according to its inventors made it most difficult to capsize the boat and also served to right it quickly when it has been turned over.

With a view to ascertaining how much listing the boat would stand without going over, Capt. Northrup gathered up [illegible] longshoremen and carpenters who were at work in the dock and had them get into the boat. A crowd of clerks and more longshoremen stood alongside on the pier and watched operations. The men ranged themselves on one gunwale expecting the boat to list gradually. Instead of so doing it went over in a jiffy and the thirteen men found themselves in the East River. They could all swim and they waited for the boat to right itself. It didn't do it.

It appeared to act just like any ordinary boat that has been tipped over. It remained bottom side up. The men in the water began to shout for help. The men on the pier looked about for ropes and poles and blocks of wood but everything at hand seemed to be of iron. In this way the work of rescue was a trifle delayed but soon all hands were at work hauling out the fast freezing and more and more exhausted men.

Twelve of them were pulled out safely but the thirteenth, Andrew Petersen of 43 Fourth street, Brooklyn, who was not much of a swimmer, became exhausted before he could be assisted. He was not able even to reach the upturned life boat and he sank in the icy water. B. J. Hall, a friend of Petersen, offered $10 to any man who would save the drowning man but there was none to do it. Hall afterward offered $10 to any one who would get the body, and William Murray, a longshoreman, earned this money with a grappling hook. Petersen was 35 years old and was married.

After it was all together too late to be of any use to the exhausted men the self-righting boat did succeed in turning over, but this did not save its inventor from getting a lot of hard knocks from those who witnessed the experiment. At the offices of the American Motor Company no information was obtainable concerning the boat or the trial.

Men in the neighborhood of the accident and not fail to note that there were just thirteen men in the boat.

TRAIN STRUCK FUNERAL COACH.

One Woman Injured and a Pair of Horses Killed at Long Island City.

Five mourners in a funeral coach on the way to Calvary Cemetery narrowly escaped being ground to pieces yesterday afternoon when the team attached to the coach took fright at an approaching train and breaking through the gates of the North Shore branch of the Long Island Railroad in Borden avenue, Long Island City, ran into the locomotive of an incoming passenger train.

Both horses were killed, and one of the inmates of the coach, Mary Ward, 40 years old, of 277a Eighth avenue, New York city, was taken to St. John's Hospital in Long Island City, suffering with a broken jaw and other injuries. The other inmates of the coach were Mrs. Nellie Kreher and her two children, Irene, aged 11, and Nellie, aged 9, and Miss Maggie Ward. The entire party lived at the same address in New York city and were attending the funeral of their aunt, a Mrs. Rogers, of Sixth avenue near Fifty-first street. The coach had passed the Franklin avenue, New York, and was driven by Thomas Dougherty.

Dougherty says his team was standing close to the gates that had been lowered across the avenue, waiting for a freight train to pass. When his horses suddenly took fright. In their plunging the reins broke and the horses dashed through the gates, breaking them off short at the posts in the next instant horses, coach and locomotive were in a heap. The coach was tossed upside down and thrown clear of the track, while the horses were dragged along with the locomotive.

When the train was stopped the occupants of the overturned coach were found lying in a heap. They were dragged out and later all were sent to St. John's Hospital, where their injuries were dressed, but Mrs. Ward was the only one whose injuries detained her there. Dougherty says that when he saw a collision was unavoidable he jumped from the box. He escaped unhurt.

Dougherty's version of the accident is contradicted by the official report given out by the Long Island Railroad. According to this report Dougherty was in a saloon when his team ran away and bolted through the railroad gates. The occupants of the coach owe their escape to the fact that the train was nearing the station and was running under reduced speed.

GREEN GOODS LAWSUIT CASE.

Partners in a Venture Lose $650 in a Jersey City Deal and Go to Law Over It.

GREENFIELD, Mass., March 14.—A lawsuit is being heard in the Superior Court here, of William E. Parker against John Kennedy, both residents of this town. Kennedy, the defendant, is well known in business circles here. He testified yesterday that he received a circular from New York green goods men, offering to furnish $10,000 in bills for $650. A sample which was furnished was taken to one of the local banks and pronoun ced good.

Kennedy says that he and Parker, the plaintiff, then formed a partnership to purchase the bills. Kennedy said that Parker was unable to go with him to New York and so he went alone after the goods. He took a train for Poughkeepsie, according to agreement, and there he met a man who took him to Jersey City and he had an opportunity to count the supposed wad of $10,000. The amount seemed correct and the bills appeared to be genuine money.

The usual box trick was worked and when Kennedy reached home, he found he had been victimized. It was his contention that Parker should stand his share of the loss of the $650.

PHILBIN DROPS WADMAN CASE.

Dr. O'Hanlon Reports That the Patient's Injuries Did Not Cause His Death.

Coroner's Physician O'Hanlon reported to Assistant District Attorney Le Barbier yesterday that his conclusion after making an autopsy on the body of Herbert C. Wadman was that while Wadman's ribs were fractured and his body was bruised, his injuries did not cause his death. Wadman, who was insane, was sent from Bellevue to the Manhattan State Hospital, where he died three days later. After hearing Dr. O'Hanlon's report, District Attorney Philbin countermanded the order to the experts of the Cornell Medical College to make microscopic examination of Wadman's organs, and the case was dropped.

Waylaid and Shot His Rival.

CHICAGO, March 14.—After lying in ambush for two hours, waiting until his rival left the girl they both loved, Joseph Barnett, a special policeman employed at Kinsley's restaurant, this morning shot and probably fatally wounded Michael Covington, a porter, before the home of Maxine Moore. Standing in the door, waving good-by, the girl saw Covington fall. She looked in the direction of the report and recognized Barnett. She gave Barnett's description to the police and he was arrested. Covington has a chance for life.

Lieut. Trull of the 71st Regiment Resigns.

Lieut. William E. Trull of Company G, Seventy-first Regiment, who has been a member since 1892, has resigned. He has been a supporter of ex-Major Clinton H. Smith for Lieutenant-Colonel. He served awhile with the Seventy-first Volunteers in Cuba and was slightly wounded.

MARCONI AFTER SIGNAL SITES

Proposed Wireless Telegraph Stations on the New England and Nova Scotia Coasts.

Signor Marconi, the wireless telegrapher, arrived yesterday aboard the White Star liner Majestic, from Liverpool and Queenstown. He expects to stay in America a month and will visit the New England coast and Nova Scotia to find sites for receiving stations for his aërial system.

He says he has equipped twenty-eight British, four Belgian and three German warships with signalling and receiving plants. He declares that a vessel fitted with his apparatus can signal 200 miles.

The North German Lloyd steamship Kaiser Wilhelm der Grosse is equipped with the Marconi system and there will be a special room aboard the line's new swift steamship Kronprinz Wilhelm, which will be in commission next September, for signalling through space.

Mr. Gustav H. Schwab of the North German Lloyd suggests that the Government might put a receiving station on the Nantucket Shoal lightship, and another, communicating with it, on the nearest point of land connecting by cable with the mainland. By this means New York might hear of the appearance of liners ten hours before Fire Island sighted them.

In regard to Tesla's declaration that he soon will be able to communicate with Europe without wires, Marconi said:

"I do not see why that may not be accomplished in time. The possibilities of the field are almost infinite."

VETOES ATLANTIC AVENUE BILL.

Savage Note From the Mayor About the Long Island Railroad Co.

Mayor Van Wyck sent back to Albany yesterday, with his veto, the bill to amend the Atlantic Avenue Improvement law, under which it was sought to have the city pay $1,250,000 for the depression of the tracks of the Long Island Railroad in Atlantic avenue, Brooklyn, without regard to the clause of the original law which stipulated that the act should not become operative until a company competent to do so had begun the work of constructing, without cost to the city, a tunnel under the East River.

The Mayor in his message declares that the Long Island Railroad has never kept faith with the city in any of the efforts that have been made to clear Atlantic avenue of its tracks, and that the company is now seeking to escape the payment of its share of the cost of the improvement. In closing his message the Mayor says:

"This bill is certainly not in the interest of the city of New York, and it is equally certain that it is in the interest of the Long Island Railroad Company. The monopoly which the Long Island Railroad Company enjoys of the right to run trains into the heart of the borough of Brooklyn, and which is carefully preserved by the provisions of this bill, that no other companies shall ever run over its rails except at the consent of the worth millions of dollars and forms an asset so valuable that the company could well afford to sustain the entire cost of so operating its railroad as to be free from all objection on the ground of the public. To take $1,250,000 out of the treasury of the city and transfer it to the treasury of the Long Island Railroad Company is little short of legal robbery. To do this by bringing prominently to the front an agreement on the part of the city to expend $1,250,000, and by withdrawing from view and concealing the fact that such an agreement was based on the construction, without cost to the city, of a rapid transit tunnel upon which the city is now to spend upward of ten millions of dollars, is, if it succeeds, a species of the exercise jugglery by which the taxpayers' money is transferred to the treasury of a private corporation. The principles of morality upon which it is sustainable are only recognized in transactions which so frequently come to light by which private interests profit at public expense."

QUAY'S "RIPPER LAW" IN COURT.

Move to Test the Constitutionality of the Measure Abolishing Offices of Three Mayors.

SCRANTON, Pa., March 14.—The famous quay measure, the "Ripper law," by which the Republican machine hopes to gain control of the offices and all public patronage in Pittsburg, Allegheny and Scranton came up for a test upon quo warranto proceedings to test the appointment of Recorder Moir in the local courts here to-day. The Ripper bill, among other things, does away with the office of Mayor in second-class cities, under which classification are placed the cities mentioned, and provides for an executive office known as Recorder. The latter is appointed by the Governor to serve until April, 1903.

The Recorder is made a petty autocrat, possessing nearly all the power wielded in a second-class city, and the members of councils are better than a mere fad. In addition to the local counsel employed in the case to-day, former Lieut.-Gov. Walter Lyon, City Solicitor Lang and Mr. McMillan, all of Pittsburg, appeared here to oppose the Ripper bill, as that would be saw the abolition of Mayors Pavlich and Wayman of those cities.

It was contended that the Ripper bill was special legislation, that it took appointive power from Councils guaranteed them by the Constitution, and was therefore unconstitutional, that it was partisan, in position, that it authorized the Governor to appoint a Recorder without having him confirmed, which the Constitution does not permit, and that the Legislature has no right to remove Mayors from office.

The defence was that municipalities are mere creatures of the Legislature and offices may be created or abolished in all cities at the Legislature's pleasure.

HIGH SCHOOL BOYS ON STRIKE.

Refuse to Observe School Routine Unless Allowed to Talk to the Girls.

BUFFALO, March 14.—Two hundred boys of the Central High School in this city are on a strike in which they have the sympathy of an equal number of girls who are also pupils in the school. The strike is caused by the enforcement of a rule, which had been for a long time a dead letter, forbidding the boys and girls to have any communication with one another in the halls or classrooms of the school. The pupils say the enforcement of the rule prevents all possibilities of social intercourse and robs school life of its pleasures.

Yesterday when the pupils assembled in the chapel the boys refused to sing, all pretending sudden illness. Anonymous communications denouncing the teachers are posted on the walls and the pupils refuse to go to the study rooms until the last minute when they go in a body, creating a disturbance that the teachers cannot prevent. They threaten other difficulties unless the rule is abrogated. The principal and his assistants have been unable to get at the ringleaders.

MORE DELAY IN PATRICK'S CASE

After a Strong Protest From Justice Jerome Against Further Adjournments.

Albert T. Patrick, the lawyer accused of poisoning the wealthy William Marsh Rice, was arraigned yesterday before Justice Jerome of Special Sessions, who sat as a committing Magistrate, on a charge of murder in the first degree. At the request of Deputy Assistant District Attorney Garvin, who, with Mr. Osborne, will prosecute the case, the examination in his case went over for a fortnight. Patrick's counsel objected to the adjournment on the ground that Patrick has already been in the Tombs since Oct. 4.

"I agree with the defendant's counsel in this matter," said Justice Jerome. "I am of opinion that in justice to the prisoner the charges against him should be expedited which is possible. If the District Attorney has sufficient evidence to base the charge on, he should be prepared to present his case. No one but a weak District Attorney would try to conceal the evidence in a case."

Mr. Garvin said he simply wanted to place his evidence in an orderly way so as to facilitate the trial.

Thirty Horses Burned in Sparta, Tenn.

CHATTANOOGA, Tenn., March 14.—Thirty horses were burned at Sparta, Tenn., last night. The loss is about $50,000 with insurance of $20,000.

The alarm of fire was given a few minutes after 6 o'clock and in a little over an hour the south and east sides of the public square were entirely destroyed. The fire originated in the store of Flexer & Sepero, from the explosion of a lamp. The losses comprise the principal business houses of the town and many residences.

SIGNALS SET AT DANGER

STOPPED TRAIN, AND SIGNALMAN WAS FOUND DEAD IN HIS TOWER.

Night Operator Blackford Shot With His Own Revolver in a Railroad Signal Tower at Parkview, Near Newark, But Whether Accident or Suicide Is Uncertain.

The Newark police and County Physician Washington of Essex county are having a hard time trying to solve to their own satisfaction the mystery surrounding the death of Night Operator William W. Blackford, who was found dead with a bullet in his right lung early yesterday morning in switch tower 22 on the Lehigh tracks at Waverley avenue, Parkview, a mile or so west of Newark.

Blackford lived with his wife and four year-old boy at 59 Watson avenue, a hundred yards from the tower. He went to work on his twelve-hour shift as usual at 6 o'clock on Wednesday night. The switch tower is a little two-story building. The handles of the levers controlling the switches on the Lehigh Valley Railroad's two main tracks and two side tracks are in the upper part of the building. Below is a lot of connecting machinery, and to keep this machinery in working order a fire is kept in a little stove. The fire prevents the lubricating oils from clogging. One of Blackford's duties was to attend to the fire.

About 1 o'clock yesterday morning Blackford was some lunch, with Railroad Detective Thomas Shea. A few minutes later Shea left. There was a switch engine in the neighborhood all night bumping freight cars around into transportable links and Blackford worked his switches all right until shortly after 2 o'clock. Then the freight conductor, Albert J. Hoey, suddenly discovered that all the danger signals were set. The engineer tooted his whistle to hurry Blackford up, but there was no response and Hoey walked down to the switch tower. He says he found Blackford lying dead on the floor in the room down stairs with his head near the door. Blackford's big 44-calibre revolver, which he always carried with him, was on the floor three feet from the body. One cartridge had been discharged, and the No. 3 buckshot with which it was loaded had gone into the operator's right side below his collarbone.

Shea was summoned and he sent word to the Newark police. Roundsman Connell, after making a thorough examination of the body and its surroundings, was at a loss to say whether the switchman had shot himself intentionally. County Physician Washington said he thought the shooting was accidental because he never heard of a man committing suicide by shooting himself in the right side. The railroad men and Blackford's relatives say he always took his revolver with him when he went to attend to the fire, because the switch tower was in a lonely place and the neighborhood was sometimes the haunt of desperate tramps or track walkers. His relatives think that he placed the revolver on a beam and that it fell off and was discharged.

Mrs. Blackford's sister said yesterday that Blackford was quite a mechanical genius and was a revolver expert. He loaded his own cartridges invariably. On him was found a permit to carry a revolver issued by Chief of Police Hopper of Newark. Blackford had worked as an operator for eleven years. He was 41 years old.

SWEARS HE KEPT HIS MONK'S VOW.

Affidavit of Greek Church Priest in Greek Fruit Seller's Divorce Case.

In the suit of Theodore Foleros for an absolute divorce from Antonia Foleros, in which he charges her with intimacy with the Greek Church priest the Rev. Agathadorus A. Papageorgopulos, she moved before Justice Scott in the Supreme Court yesterday to increase the alimony above the $7 a week which Magistrate Deuel recently directed Foleros to pay her.

The priest made affidavit in support of the defendant in which he says he knew her before her marriage and had merely acted as her tutor in languages. He denies that there was any familiarity between them, and says:

"I am a monk, archimandrite and priest of the Greek Church. When I became a monk I had to take the vow of celibacy, which I have kept, and I never have had any desire to enter into the marriage state.

Foleros at every opportunity that at the visits to the priest his wife had been "attired in a loose wrapper with her arms bare, and her underclothes ill concealing her form, and this alleged clergyman's attire was disarranged to the point of indecency. He further states:

"On the trial of this action I will be able to prove that the time that he visited my house for the alleged purpose of giving lessons in English was about two and a half o'clock in the morning, and that he was frequently seen entering my house as early as 5 o'clock in the morning and leaving between that hour and 9 A. M., hours at which he well knew that I was absent from home and at the market, owing to the nature of my avocation as a fruit dealer.

"The absurdity of the statement that he visited my house at these unseemly hours of the night and morning for the purpose of teaching my wife English will be readily understood when the Court is acquainted with the fact that the defendant herein speaks English fluently and much better than the correspondent. I will also be able to prove at the trial that the conduct of the correspondent when he alleges he was teaching her English, was anything but compatible with his vow of celibacy, with his avocation as a monk and priest, or that which is usual between teacher and pupil when studying the English language."

Justice Scott refused to increase the alimony but gave her attorneys a counsel fee of $100.

LIVERYMEN WIN ONE CASE.

Decision Reserved as to Other Arrests Caused by the Cabmen's Association.

Patrick Frawley of 801 Sixth avenue, who was arrested on Monday night at the instigation of the cabmen's association, charged with allowing five of his cabs to stand in front of Burns's restaurant in Sixth avenue, was discharged yesterday in the West Side police court, as he showed that he had a special license for that. He said he had to stand there and that the other three had been summoned for guests. Two drivers for S. C. Odell, who were arrested in front of Rector's were paroled for further examination.

$1,000 Verdict Against Magistrate Crane.

The jury brought in a verdict of $1,000 in favor of Lawyer Thomas J. O'Neill in the Supreme Court yesterday in his action to recover $3,750 from City Magistrate Leroy B. Crane as his share of the $15,000 fee which Dock Commissioner Peter F. Meyer paid in settlement of the breach of promise suit brought against him by Miss Emma Von Raven. The jury were out a little over an hour. Mr. Crane asked that the verdict be set aside, but the motion was denied.

Post Office Record Day for Chicago.

CHICAGO, March 14.—Another record was made by the Chicago post office yesterday. The amount of mail matter originating in Chicago was 154 tons, which is far above the business of any other day in the history of the office. The opening of spring trade in this city was responsible for the record, as was indicated by the number of circulars and catalogues sent out by business houses.

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NO DATE SET FOR LAUNCHING.

Herreshoff Says the Public Will Get Due Notice When the Time Comes.

BRISTOL, R. I., March 14.—THE SUN correspondent met Mr. Herreshoff to-day on his way from his house to the shop where the Belmont Cup defender is being built, and spoke to him in regard to the launching date of the yacht.

"We have a time in view," said Mr. Herreshoff, "when we hope to get the boat overboard but no exact date has yet been fixed. We never fix a positive date for launching until a few days before the event, as the least delay might make a change necessary and thus complicate matters. You may say, however, that the public will receive due notice, as usual."

In reply to a question as to the present condition of the boat, Mr. Herreshoff said:

"I cannot go into details, but will say that we have been fortunate in having no drawbacks in construction so far. The plating is nearly all on, but there is considerable riveting and other work to be done on the skin of the yacht yet. We have experienced men and the progress made has been very satisfactory to all concerned."

"It is said that you have embodied several new ideas in your latest creation," was the next remark made by the reporter.

"I do not care to speak about that," said Mr. Herreshoff. "New ideas are plentiful nowadays. The question is to make them of some value. Whether the new boat will show anything worth while in this direction remains to be seen."

Mr. Herreshoff is seldom absent from the construction shop during working hours, and seems to be in the best of spirits. He is always a hard worker, and his chief pleasure in life is watching the working out of his plans for a racing craft. He closely inspects every part of the work, and his men understand that the best is none too good to pass muster.

All the plates on the yacht are now in position, but many of them are held in place by bolts above. Each plate must have a double row of rivets around its edge, and the work of setting these up and finishing them off smoothly will require at least two more weeks. Steel workers are still busy on the interior of the boat, finishing off the rivets of the watertight compartments, and strapping the bow frames with bands of steel. The hull of the boat will be lighter than Columbia's, the frames and straps being smaller. The new method used in putting in the bracing gives strength without counting much in weight. The steel spars and sails are progressing well, and everything is timed to be ready when the boat is launched, the latter part of next month. Billman's men, having laid out the work on the standing rigging, have left it for Herreshoff's men to complete, and will not be here again until a short time before the yacht takes the water.

DIFFERS WITH BUILDER LAWLEY.

Designer Does Not Expect Boston Boat to Be Launched Until April 25.

BOSTON, March 14.—Designer Crowninshield does not agree with Builder Lawley that the Independence will be launched during the first week in April, even if the work goes along without interruption from now on. The designer says he will be satisfied if the craft goes overboard by April 25. He thinks the plating will be finished by April 1, but says there is a lot to be done after that.

A new gang of workmen began putting the stringer plates along the deck to-day. The first of these were bolted to the beams on the starboard side. They are of nickel steel and will run from stem to taffrail on either side of the deck to a width of about eighteen inches, and there will be a steel tie plate running down the centre of the deck. The remainder of the deck will be plated with aluminum, which metal is expected at East Boston to-morrow. The stringer plates are one-thirty-second of an inch thicker than the aluminum, which is to be five-eights of an inch thick. The whole deck will be covered with canvas to give the crew a better footing than would be furnished by bare metal surface.

The lead ballast is nearly all stowed in the tie. It has been Crowninshield's idea from the first to save weight, and in furthering this idea he has decided to strengthen the forward and after overhangs with steel struts and braces instead of steel bulkheads.

There has been much discussion as to whether or not Mr. Lawson will sail his own boat during the racing. There is everyindication that the owner will spend some of his time on board, for the cabin plan calls for an "owner's stateroom" on the starboard side, just aft of the main cabin and sailroom. There will be three staterooms for guests and three others, for the captain, steward and quartermaster respectively.

Equestrian Sports at Aiken—J. B. Lippincott Falls From His Horse.

AIKEN, March 14.—About 600 persons gathered at the polo grounds