THE BROADWAY RAILROAD.

The Standing Dish for the New Yorkers.

ANOTHER DECISION IN THE CASE.

The Case of the Common Council in Contempt

SUPERIOR COURT—SPECIAL TERM.

The Hon. Judges Duer, Bosworth, and Emmet on the bench.

MARCH 1.—*The People vs. Oscar W. Sturtevant.*—Bosworth, J., furnished to Judge Duer the following advisory opinion, which was adopted by him as the opinion of the Court:—The specific question under consideration is: Shall the defendant be required to answer the fifth interrogatory? This proceeding is based on an allegation that the defendant has disobeyed an injunction-order made by a Judge of the Court in an action pending therein. The papers on which the attachment was issued allege that the defendant, in addition to disobeying the order, introduced and voted for a certain preamble and resolutions relating to the issuing of the injunction, the acts prohibited by it, and professing to state the grounds on which the defendant assumed to disobey it. The fifth interrogatory calls upon the defendant to answer whether he did not vote for such preamble and resolutions; and whether, by his vote and others, they were not adopted by the Board of which he is, and was then, a member. To determine whether the defendant should be required to answer it, it is necessary to look at the nature of the present proceeding, the ends that may properly be accomplished by it, and whether the fact of having voted, or having omitted to vote for them, is one that can legitimately be taken into consideration in the final disposition of this matter, and which can justly affect the ultimate decision. The code provides that the order which has been disobeyed may be enforced as the order of "the court." (Code, sec. 218.) Section 471 declares that, until the Legislature otherwise provides, the code "shall not affect any proceedings provided for by" chapter 8 of the third part of the Revised Statutes, excluding the second and twelfth titles thereof, unless some provision thereof is plainly inconsistent with the code, and that any such provision shall be deemed repealed. These proceedings are instituted under the thirteenth title of that chapter of the Revised Statutes. The provisions of the Revised Statutes must, therefore, furnish a solution of the question under consideration. They provide that "every court of record shall have power to punish, as for a criminal contempt," persons guilty of certain acts, and, among others, "wilful disobedience of any process or order lawfully issued or made by it." (2 R. S., 278, sec. 10, sub. 4.) This class of contempts may be punished by a fine not exceeding two hundred and fifty dollars, and by imprisonment not exceeding thirty days. This punishment may be inflicted irrespective of the consideration of any injury done to a party to the action on which the process was issued, or the order made, and is to be fixed irrespective of any such consideration. For all contempts of this character the offending party may be indicted (2 R. S., 692, §14) as for a misdemeanor. If subsequently indicted, the court before which a conviction is had on such indictment is required, in forming its sentence, to take into consideration the punishment before inflicted in the proceedings as for a criminal contempt. (2 R. S. 278, §14.) The revisors, in their notes upon this title, (tit. 2 of chap. 3 of part 3,) remark that a "solid and obvious distinction exists between contempts, strictly such, and those offences which go by that name, but which are punished as contempts only for the purpose of enforcing some civil remedy. This distinction has been observed, and the former are intended to be included in the preceding sections. The latter class are treated of subsequently among miscellaneous proceedings in civil cases." (3 R. S. 695, foot of the page.) The statute in relation to the latter class, (2 R. S. 534, §1,) provides "that every court of record shall have power to punish, by fine and imprisonment, or either, any neglect or violation of duty, or any misconduct, by which the rights or remedies of a party in a cause or matter depending in such court may be defeated, impaired, impeded, or prejudiced, in the follow cases," and among others, "for disobedience of any process of such court, or of any lawful order thereof, or of any lawful order of a judge of such court." It will be noted that the expression here used is, "for disobedience" of a lawful order, omitting the word "wilful." To punish as for a criminal contempt there must have been "a wilful disobedience." (2 R. S. 278, §10, sub. 3.) Although the disobedience was not wilful, a party offending may be punished in the cases prescribed in 2 R. S. 534, §1, if his neglect of duty was such that by it the rights or remedies of a party to a cause might be defeated, impaired, impeded, or prejudiced. But although in such a case the disobedience might have resulted from a misapprehension of duty, or from the advice of counsel, honestly given and implicitly believed, that the act which the law adjudges to be disobedience was not prohibited, yet the disobedience may have been wilful, and have been accompanied with such acts and circumstances as would show a purpose to make the disobedience studiously offensive to the court, and to publicly manifest by it a contemptuous disregard of its order and authority. If the latter should be the true nature and character of the act of disobedience, is it to be overlooked, and are all interrogatories calling for answers that might establish it to be suppressed? The 20th section declares, that if the court adjudges the defendant to have been guilty of the misconduct alleged, and that "it was calculated to or actually did" produce certain results, "it shall proceed to impose a fine, or to imprison him, or both, as the nature of the case shall require." If actual loss has been produced, a fine shall be imposed that will indemnify the party, and satisfy his costs and expenses, (sec. 21.) The statute is imperative, that in case of actual loss, a fine, sufficient to indemnify and to satisfy costs and expenses, must be imposed. In all other cases, that is, in those cases in which no actual loss is shown, but in which it is adjudged that the act of disobedience was calculated to defeat, impair, impede, or prejudice the rights or remedies of any party, the fine shall not exceed $250 over and above the costs and expenses of the proceedings, (sec. 22.) For what, it may be asked, is this fine to be imposed in a case in which no actual loss has been sustained, and by what considerations is a court to be governed in properly determining whether it shall be $1 or $250? This question can be more advisedly answered on a reference to other provisions of this statute. It will be noted that sections 21 and 22 speak only of the fine to be imposed, and nothing in relation to the imprisonment. Section 20 gives the power to fine and imprison. Sections 23 and 24 relate to the matter of imprisonment, and embrace two classes of cases. The 23d regulates the extent of the imprisonment, where the misconduct complained of consists in the omission to perform some act or duty which it is still in the power of the offending party to perform, and provides that in such cases he shall be imprisoned only until he shall have performed such act or duty, and paid such fine as shall be imposed, and the costs and expenses of the proceedings. In such a case, the order and process of commitment must specify the act to be done, and the amount of fine and expenses to be paid. If able to pay the latter, the term of his imprisonment will depend exclusively on his own volition; for when he has paid the fine and expenses, and done the act, or performed the duty, it will terminate, and he will be entitled to a discharge. In all other cases, that is, in all cases except those in which the misconduct alleged consists in the omission to perform some act or duty which it is yet in the power of the defendant to perform, he may be punished by imprisonment "for some reasonable time, not exceeding six months," and until the expenses of the proceedings are paid, and also, if a fine be imposed, until such fine be paid (id. § 25.) The power to punish by imprisonment, conferred by section 20, so far as the imprisonment is ordered, by way of punishment, is limited by section 25 to six months; but if the fine and expenses are not paid it would last through life but for the act of 1843, chapter 9. This limitation of the power to imprison for a period not exceeding six months, has no connection with the imprisonment ordered to compel the payment of the fine imposed, and of the costs and expenses of the proceedings. For if the power to punish by imprisonment in this class of cases is a power to be exercised for the sole purpose of compelling payment of the fines and expenses, then it would follow, as a limit is set to the power to imprison, and the imprisonment cannot exceed six months—that at the end of that period the offending party must be discharged from imprisonment, whether the fine and expenses are paid or not. Yet, independent of the express language of the statute, that where the punishment adjudged is merely a fine and payment of the expenses the imprisonment must continue until they are paid, it has been uniformly held that no power was competent to terminate it short of that period, and hence the act of 1843 (chap. 9) was passed authorizing a discharge on proof of inability to do the things required. The imprisonment authorized by sec. 25, within the limit of six months, if imposed at all, is by way of punishment, and must be endured, even though the fine and expenses be paid the moment the decision is made. This imprisonment for a reasonable time, not exceeding six months, may be imposed in every case in which the misconduct alleged calls for it, except in the cases specified in sec. 23. In that class of cases the misconduct or disobedience consists in not having acted at all—in all others in having actually done something prohibited. It may be thought singular that in the case of a criminal contempt, and in punishing it as such, the power to imprison should be restricted to thirty days, and that in proceeding to punish as for a contempt injuries to civil rights the power to imprison for a longer period should have been conferred. Yet the revisors, in their notes to sections 23 to 25 of 2 R. S. 538, make this comment:—"In cases of criminal contempt, by sec. 11, title 2, of chap. 3, of this part, the imprisonment is limited to thirty days. Perhaps there may be cases where a longer imprisonment for injuries to civil rights ought to be allowed." These three sections were enacted in the form in which they were proposed, (3 R. S. 773, 2d ed.) If, then, a fine may be imposed as a punishment where no actual loss has been occasioned by the disobedience—if imprisonment not exceeding six months may be ordered with the same view, if the imprisonment, when ordered, is to be for only a reasonable period, it is obvious that some principle exists, by which the Court ought to be guided in discriminating between cases, and by which in some it may properly fine to the extent of $250, while in others the fine should be nominal only, and by which it may determine whether imprisonment should be ordered as a punishment, and what term would be a reasonable period in any particular case. The reported cases show that courts have regarded it as free from doubt that the nature of the disobedience, as whether it was wilful or otherwise, was one of the matters to be regarded in determining whether any and what punishment should be inflicted beyond the imposition of a fine sufficient to indemnify an injured party for his loss and to satisfy his expenses. In Hawley vs. Bennett, 4 Paige, 164, the Chancellor said, that "so far as the rights of a party have been affected by the breach of an injunction, it is no defence to the person who has been guilty of violating the same that he did it under the advice of counsel, although, if he has acted in good faith, it may be sufficient to protect him from punishment as for a criminal contempt." In Rogers vs. Paterson, id. 456, the Chancellor restated the principle thus: "And the advice of counsel cannot protect a party in disobeying an order of the court, so as to prevent the adverse party, whose remedy is impaired or impeded by such disobedience, from taking the necessary steps to compel a compliance with the order, although the fact that the party has acted in good faith, and under the advice of his counsel, may be sufficient to prevent the imposition of a fine beyond the actual amount of the injury sustained by the adverse party, and the necessary expenses of the proceedings." In Sullivan vs. Judah, 4, id. 447, he said, "In this case it is evident the complainant has sustained no injury by the proceedings of the defendants, although they have proceeded in direct opposition to the injunction. And the excuse offered by them is sufficient to prevent the imposition of any considerable fine as a punishment for contemning the process of the court." In Lansing vs. Easton, 7 Paige, 367, he remarked that "The fact that the defendants acted under the erroneous advice of counsel, to whom they applied for information how they could elude the justice of this court, and at the same time avoid punishment for a breach of the injunction, cannot protect them from a fine sufficient to compensate the adverse parties for the injuries they have sustained by the wrongful acts complained of, though it may furnish a ground to justify the court in refusing to inflict a further punishment upon the offenders for a violation of its order." In the Albany City Bank vs. Schermerhorn, 9 Paige, 379, in which the Chancellor, on appeal, reversed a Vice Chancellor's order adjudging parties guilty of a contempt, he stated that an order of conviction should direct "to whom the fine is to be paid, or what is to be done with such fine when paid, &c., so that the order, and the process of commitment founded thereon, may show the nature of the conviction, and what the defendant is to do to entitle himself to a discharge from imprisonment." In the People ex. rel., Backus vs. Spalding, 10 Paige, 284, the report of the case shows that Spalding had been convicted, by a Vice Chancellor, of a wilful breach of an injunction issued upon a creditor's bill filed against him. After he had been committed, he was discharged by a Supreme Court commission in proceedings under a *habeas corpus*. The Vice Chancellor made an order for a re-commitment, on the ground that the commissioner had no jurisdiction in that case to order his discharge. From the order re-committing him, Spalding appealed to the Chancellor, who affirmed the order. An appeal was taken to the Court for the Correction of Errors. That court affirmed the judgment of the Chancellor. Chief Justice Nelson, in delivering the opinion of the court, remarked that "the act for which the appellant had thus been adjudged guilty is a criminal offence under the revised statutes, and was so before at the common law, subjecting the offender to indictment, and, on conviction, to fine and imprisonment." (2 R. S., 692, § 14, id. 697; 4 Bl. Comm., 129.) "In cases confessedly criminal and indictable, the penalties for which would ordinarily go for the benefit of the people, the courts are authorized to impose a fine with a view to the indemnity of the party aggrieved, his acceptance of it being declared a bar to any private action for the injury. The fine, however, is no less a penalty for a criminal act than if inflicted for the benefit of the people; but the imposition of it in the way prescribed accomplishes the double purpose of punishment for the misconduct on the one hand and indemnity to the aggrieved party on the other." (7 Hill, 301.) In that case the court below adjudged that an actual loss had been occasioned by the disobedience; and although the reports of the case show that he was fined for the contempt to the amount of $3,000, and the costs and expenses in relation to the contempt to the amount of $196 51, it does not appear how much was due on the judgment on which the creditor's bill was filed. The order of conviction directed the costs to be paid to the solicitor of the relator, and the $3,000 to be paid to the clerk of the court, subject to the further order of the court. (4 How, S. C. R. (U. S.) 21.) In that case Spalding was adjudged, on the 21st of March, 1842, to have wilfully violated the injunction. On the 7th of May, 1842, he was arrested on an *alias mittemus*, and continued under arrest until the 29th of September following, when he was discharged by the Supreme Court commission, on the ground that a discharge in bankruptcy, granted on the 17th of September, relieved him from the fine, costs, and expenses, which he had been ordered to pay. In the Court for the Correction of Errors it was contended, on behalf of Spalding, that the proceedings under which the fine had been imposed, being under the Revised Statutes providing for the enforcement of civil remedies, should, though in form criminal, be regarded simply as another remedy for collecting the debt claimed in the chancery suit, and upon which they had been founded—that the fine was, in fact, imposed for the purpose of being applied to the extinguishment of the debt, whenever, in the progress of the suit, it should have been established, but that it was incidental to the debt, and dependant upon it, and that a discharge of the one must necessarily discharge the other. (7 Hill, 302, 303.) It was in answer to this argument that the remarks of Chief Justice Nelson, above quoted, were made. The question was not presented, nor was any suggestion made by the court, in relation to the point, whether in any case imprisonment might properly be ordered as a punishment in addition to the imposition of a fine, nor whether a fine could be imposed merely as a punishment in a case in which one was imposed to indemnify against actual loss. Section 22 is express that a fine may be imposed, not exceeding $250 over and above the costs and expenses of the proceedings, even in those cases where no actual loss was occasioned by the disobedience. Such a fine, if imposed, must necessarily be imposed merely as a punishment, and not as an indemnity, and when paid goes to the benefit of the public, and not to the complaining party. Macey vs. Jordan, 2 Hill, 570, was an appeal to the court of last resort from an adjudication of the Chancellor, that Macey had wilfully violated an injunction issued on a creditor's bill filed against him, and fining him to the amount of the respondent's debt and the costs of the proceedings. The injunction was served on the 23d of November, 1838. On the 5th of December following, Macey violated it by making an assignment of his property. On the 6th of August, 1842, he was discharged under the Bankrupt act. In October, 1843, an attachment was applied for, over a year after obtaining his discharge in bankruptcy, to arrest for the violation of the injunction. In March, 1844, he was adjudged guilty of the contempt alleged to have been committed in December, 1838, some five years prior to the issuing of the attachment. Justice Jewett, in the opinion delivered by him, remarks that "the cause for which the fine was imposed was the criminal contempt which the appellant was adjudged to have committed in violating the injunction." (2 R. S. 278 §10.) The punishment for such an offence is by fine or imprisonment, or both, according to the aggravation of the case; and where a party has suffered by the misconduct which constitutes the offence, the fine is to be paid to such party. (2 R. S. 538, §20 to 22.) It may be true, that if the debt has been paid subsequently to the violation of the injunction, no punishment, or only a nominal fine, could have been imposed." * * * "The proceeding after the attachment issued was for a criminal offence, and although the respondent might incidentally derive a benefit from the conviction, still the proceeding was not upon the original demand, or for the recovery of a debt." The judgment of the Chancellor was affirmed by a vote of twenty-two to two. The views expressed of these proceedings in the cases referred to, do not necessarily conflict or intimate any interpretation of the statute at variance with the ordinary and natural meaning of its terms, if each opinion cited is read as all opinions should be, with reference to the particular facts of the case in which it was pronounced. They seem to show a uniform understanding of the statute, that the disobedience of an order may not have been wilful, that it may have arisen from an honest misapprehension by the offending party of the nature of the act which he did, and may have occurred in good faith, and in the belief that it was not disobedience—that in such a case, if actual loss results from the disobedience, the court has no discretion which will absolve it from imposing a fine which will indemnify the injured party for the loss. That in such a case no fine should be imposed or imprisonment ordered, purely and solely as a punishment, beyond the punishment that may result from the imposition of a fine sufficient to indemnify against the actual loss, and to satisfy the expenses of the proceedings. That the disobedience may also have been wilful and designedly contemptuous, and in such case the contempt is criminal, and may be punished according to the aggravation of the case. The opinion is intimated by some judges that, in case the contempt is criminal, and actual loss ensues, the fine imposed should be regulated in its amount with that of the actual loss, and is to be paid to the party injured. But no opinion is intimated that no imprisonment can be superadded in such a case, solely for the purpose of punishment. It seems to be clear, also, that in case of wilful disobedience, although no actual loss is suffered, a fine not exceeding $250 may be imposed, under section twenty-two, solely as a punishment of the criminal offence, and that imprisonment may be ordered, under section twenty-five, for a reasonable period—"as the nature of the case shall require" (Sec. 20, id.) If imprisonment cannot be ordered under section twenty-five, solely with that view, then that part of the section which prescribes the limit of six months is nugatory, for the reason that imprisonment ordered to coerce the payment of the fine must continue until it is paid, while this section expressly provides that the imprisonment shall be "until the costs and expenses of the proceedings are paid; and also, if a fine shall be imposed, until such fine be paid;" and this is in addition to an imprisonment ordered for some reasonable time not exceeding six months, which of course must terminate when the period expires, although the fine has not been paid, and cannot terminate before, even if has been paid, while the imprisonment may continue for years afterwards and until the fine is paid, but is continued simply because it is not paid. I admit an inability to conjecture what case may arise in which it would be proper, in addition to imposing a fine that would indemnify the injured party and satisfy his costs and expenses, to order an imprisonment as a punishment exceeding in duration that which the court could order if the proceeding was one to simply punish the offender for a criminal contempt. The revisors, however, suggested that such cases might arise, and submitted sections framed with a view to confer such power, and the Legislature enacted the sections as proposed, and render this exposition of the views with which they were framed. What effect the passage of the resolutions referred to in the fifth interrogatory should justly have upon the final judgment of the Court, is a question not now under consideration, and is one in respect to which the parties should be heard, and which should be carefully considered, with all other attending circumstances, before any opinion is formed. But it must be obvious that the passage of those resolutions unexplained is pertinent to the question whether the disobedience was wilful, or was an act done in good faith, and in the honest belief that nothing prohibited by the injunction was done by the defendant in voting for the resolutions referred to in the fourth interrogatory. If they tend to show that the acts which are alleged to constitute a violation of the injunction were done in good faith, and in the honest belief that they did not violate it, then, according to all the cases, and upon principle, there should be neither fine nor imprisonment, for the purpose of punishment, if no actual loss has resulted to the relators. There should be neither fine nor imprisonment, for the very reason that the act of disobedience was not wilful, but was done in good faith and without any intention to disobey. If this be so, then it would seem to be equally incontrovertible, that if, unexplained, they tend to show that the disobedience was deliberate and designed, and that the acts done were understood as being expressly prohibited by it, such a consideration cannot be overlooked in any final adjudication based on correct principles and justly adapted to the nature of the case. I should not have deemed it necessary to have examined or discussed this question so fully, were it not of the highest importance, that in every case that may arise, these proceedings should be conducted throughout on principles applicable equally to the case of all parties offending, and with a correct understanding of the meaning and object of the statute under which they are prosecuted, and that I felt it incumbent, from the confidence with which eminent counsel avowed the views they presented, to distrust the accuracy of my own previous convictions, and to consider, upon a full examination, whether they were well founded. On such examination, I cannot resist the conclusion that the fifth interrogatory is pertinent and proper, and that it is the duty of the defendant to answer it.

Mr. Field then read the following answer of ——— to the fifth interrogatory filed against him in this proceeding:—

Fifth.—To the fifth interrogatory he saith, that he did, at such meeting and immediately after the adoption of said resolution, vote with a majority of the members of the Board of Aldermen, in favor of the preamble and resolutions, of which a copy (marked C) is annexed to the interrogatories. That in doing so, his only motive was to vindicate the dignity and assert the rights of the Common Council of the City of New York, and of their whole constituency; which dignity and rights he believed to be unjustly and illegally assailed by the injunction, and complaint on which it was founded, of a portion of whose contents he had heard through public rumor. That the motives of the members of the Common Council were aspersed, and their self-respect wounded, by the charges of the said complaint; and that the circumstances under which the injunction was obtained and served were highly irritating. The resolution had been pending nearly two months; the chambers of the judges were within a few rods of the chambers of the Common Council, and the Mayor's and other public offices of the city, and in the same building with the office of the Corporation Counsel. There had been ample opportunity to apply for the injunction before; and even at the time when it was applied for there was time enough for notice to the corporation, and hearing them, before granting the injunction; that the terms of the members of the Board of Assistant Aldermen, a part of the Common Council, were to expire on the 3d January, 1853; and when the respondent heard that an injunction had been granted without notice and continued beyond the time when the Common Council was to expire, and requiring the defendants, as if in mockery, to show cause against it on the 12th of January, he believed that it was a device of the plaintiffs to defeat the resolution by indirection, and virtually to decide the case without a trial. This respondent also believed, as he still believes, that the Court had no jurisdiction to grant the injunction; and believing that it is the right of every citizen to question and resist the exercise of illegal power, he did, under the influence of all these considerations, vote for the said resolutions; but, in doing so, he did by no means intend to question the exercise of any rightful power, or offer any resistance to the law, or any contempt to the lawful authority of the Court. Said preamble and resolutions were, therefore, adopted by said Board.

Mr. Van Buren deemed it important that the plaintiffs should have copies of these answers. Aldermen Sturtevant and Wesley Smith are the only two defendants who have, in compliance with the order of the Court, served their answers on them. It may be necessary to make some affidavits in reply to these answers, and they therefore ought to have them.

Judge Duer—The answers, with the exception of one or two, are all the same.

Ex-Chief Justice Bronson inquired how many had answered.

Mr. O'Conor—Three.

Ex-Chief Justice Bronson—Then there are twenty-four yet to answer.

Judge Duer understood Mr. O'Conor to have promised to file the others in the course of the day.

Mr. O'Conor would rather not pledge himself that they would be all filed to-day; there may be many delays; but the answers will be the same as those read.

Ex-Chief Justice Bronson—They were to have been served on us on Friday. It may be all right when thirty aldermen are concerned; but if it was an individual, this Court would commit him for not complying with its order.

Mr. O'Conor—Take your remedy.

Ex-Judge Bronson—If the order was entered on the minutes I would move for an attachment.

Judge Bosworth said there did not seem to be any difficulty. Counsel has read the form of the answers, and says that the others will be the same.

Mr. O'Conor—There has been so much cavilling I will not make any promise.

Judge Duer said the Court could not relieve Mr. O'Conor from the promise already made, that the answers shall be filed in the course of the day.

Mr. O'Conor would do so, but there may be one or two that may not be found, and he should not like the Court to have the opportunity of sending him to jail to keep company with his clients. (Laughter.)

Mr. Van Buren, after looking at Alderman Sturtevant's answer, proposed to read one or two affidavits which would be applicable to all of the defendants. He then read that of Mr. Henry Hilton, which stated that he was present on the 29th Dec., 1852, when Malcolm Campbell delivered a copy of the injunction order, and showed the original to Alderman Sturtevant; that no action was had in the Board on the Broadway railroad until at least one hour after such service. Mr. Van Buren also read the affidavit of Mr. Campbell, corroborating Mr. Hilton's. He then proceeded to say that the twenty-first section of the act under which they were proceeding states that the Court shall impose such fine as will indemnify the party for any injury or loss they may sustain; with this view he presented another affidavit of Mr. Hilton, which set forth that he was one of the firm of McMurray & Hilton; that they were employed by the propertyholders on this proposed line to prosecute this case; that Messrs. Bronson, Van Buren, Gerard, Wood and Whiting, were employed as counsel, and that the expenses to which they had been put amounted to $7,000.

Judge Duer—The act says that the costs and expenses may be allowed to the party, as well as the actual losses.

After some discussion on this point, the Court said that that affidavit was not relevant at present.

Judge Bosworth did not understand the affidavit to specify any loss beyond that of fees of counsel employed.

Mr. Van Buren—The Court would see that an affidavit of the actual loss could not be made; if the grant is not declared void, it would be a very serious loss to the property holders.

Judge Duer—They can't sustain any actual loss, if the grant is declared null and void.

Mr. Van Buren—The expenses are not only for the proceedings in this Court, but for a motion against the parties in the Supreme Court.

Judge Bosworth—The act says we can't fine beyond $250 and the costs and expenses.

Judge Duer—The taxable fees to counsel would be $20 for each attendance, and that alone would amount to a considerable sum. The Court would not hear argument on that point now, but expressed their desire to know counsels' views with regard to the nature of the punishment that ought to be imposed.

Mr. Van Buren then proceeded to address himself to that point, and was followed in reply by Mr. O'Conor and Mr. Field. Ex-Chief Judge Bronson closed for the plaintiffs, and Mr. Field was permitted to file affidavits in answer to those of Mr. Hilton.

The matter was then adjourned to Saturday next, when the sentence of the Court will be announced.

An Opinion

OF THE EMINENT CIVIL ENGINEER, JOHN B. JERVIS, ESQ., ADVERSE TO THE PROJECT OF A RAILROAD IN BROADWAY.

NEW YORK, Feb. 19, 1853.

DEAR SIR—I have given such consideration to the request you made on behalf of the committee engaged in examining the question of the proposed railway in Broadway as the limited time I have at command would enable me to do.

A railway in a public street must be regarded as an interference, and injurious to the occupation of the street for ordinary vehicles. The injury will be proportioned to the magnitude of the ordinary traffic and the proportion of width occupied by the railway. A small traffic in a wide street would experience little injury; but this would of course increase with the increase of ordinary traffic, the comparative narrowness of the street and the frequency of running railway cars. The causes of this inconvenience are obvious. The cars must occupy a certain part of the street. They cannot turn out for ordinary vehicles, which must get round or past them as best they can. The rail requires a groove that is unfavorable for ordinary vehicles, even in the improved construction.

The case proposed is for a railway on one of the greatest city thoroughfares in the world, probably not surpassed by more than one. The project must be regarded as an experiment, and the consequences involved are very important.

I do not know the exact width of Broadway between the curbstones, but suppose it varies in width of carriageway from, probably, thirty-five to forty feet. It cannot, I think, vary materially from this. The ordinary use of this street, other than for stages, is for various vehicles employed in the traffic of goods and passengers. It is a commercial street, mostly devoted to the retail trade. In its business, vehicles must often stop at the sides, discharge and receive goods and passengers. This occupies a portion of the carriageway, and compels those passing to occupy the more central portion. If the most general width of the carriageway be taken at thirty-eight feet, it will not, probably, be found far from the truth. The cars of the Sixth avenue railway are about seven feet wide, which is probably as narrow as would accommodate a large traffic. Two tracks are indispensable to such a business as contemplated for the proposed railway. The cars must have some space between them, and seven and a half feet will be as little as can be taken on each side of the centre of carriageway—vehicles, standing at the side, will require about six feet in general—this is for ordinary kinds—thus the rail car passing and the vehicle standing at the side will occupy thirteen and a half feet out of nineteen, leaving five and a half feet for an ordinary vehicle to pass on that side. Many that travel in Broadway would require more space than this to move in. A carriage moving on the same side, in an opposite direction, would block up the passage. If there were but a small traffic, either by car or ordinary vehicles, this inconvenience would be small—but it has to be kept in mind, that, exclusive of stages, there are a great number of ordinary vehicles, and to accommodate the passenger traffic there must be a great number of cars. It has been said that the stages are the principal vehicles in Broadway; but I think if any one will observe with a little care, they will see a great number of others, which in a general view are kept out of notice by the size and color of the stages, which gives them great prominence in the street. The cars cannot move along in regular distances from each other. They must stop to take in and discharge passengers, and as all must go to the central part of the street to get in, they will be detained often by the passing of other vehicles. The cars will often be stopped by the passing of other vehicles across the tracks, which they will be compelled to do for various reasons. At the cross streets below Canal street, especially below Barclay street, the interference of the cross traffic will be very much in the way of the cars. A train of loaded carts will often get the street, and indeed there is no avoiding it. They will insist on their right, and will often stop the cars, which cannot turn and work their way in a crowd like a stage or other ordinary vehicle. It may easily be imagined what a confusion would be produced by several cars brought up on each track with the ordinary traffic in Broadway, brought into collision with the traffic in the cross streets; then, circumstances will often bring several cars together, and greatly increase the difficulty and delay to ordinary vehicles in crossing the street.

I have not the statistics of the Broadway traffic, nor is it a matter that could well be reduced by computation. The propriety of entering upon the experiment must be determined, I think, by the general view of the circumstances and magnitude of this traffic. I have resided for the most part of the last sixteen years in the upper part of the city, and attended to business in the lower part. The stages in Broadway have been the means I have used in travelling. The projects that have often been agitated for a railway in this street have engaged my attention, and the operation of a railway in this street has never appeared feasible. As a citizen, (now residing in Twenty-third street,) I would prefer that no railway be laid in Broadway. I am fully convinced it would be a public injury, not only to Broadway, but to the whole city. It is, in my opinion, a great error to suppose the railway would be any relief, (if relief is wanted,) to this street; on the contrary, that it would increase the confusion and embarrassment, and be a damage to the commercial and manufacturing interests of the city. Broadway is the favorite location of our large hotels. It is the resort of thousands of people from distant parts of the country, that here find the articles of trade of the more expensive kind, and hence it is the most valuable locality for retail trade. To interfere with such a street by laying a rail track in the centre, appears to me quite inconsistent with the legitimate accommodation of the large traffic it now requires. Should the experiment be made, I do not believe six months would pass before every impartial man would proclaim for its removal. As a citizen of New York, I regard the putting down of rails in Broadway, as a calamity that every reasonable effort should be enlisted to prevent. This is my judgment of the matter, and though I have had much to do with railways, it has been my opinion during all the discussions I have heard, that Broadway is not a proper place for a railway. Respectfully, your obedient servant, JOHN B. JERVIS.

D. H. Haight, Esq.

City and County of New York:—On this, the 23d day of February, 1853, before me, Edwin F. Corey, Commissioner of Deeds for the city and county of New York, came John B. Jervis, to me known, who being by me duly sworn, did depose and say, that the statements made by him in the foregoing letter, to which he has subscribed his name, are true.

EDWIN F. COREY, Commissioner of Deeds.

Theatrical and Musical.

BOWERY THEATRE.—This old and favorite establishment, which is now in a career of prosperity, offers for the amusement of its patrons, a very attractive bill. The first piece announced is Bulwer's excellent comedy of the "Lady of Lyons," with Mr. E. Eddy as Claude Melnotte, and Miss Fanny Landers, a pupil of Mr. Stephens, as Pauline. The entertainments will conclude with the drama entitled the "Felon's Last Dream." The receipts are for the benefit of Mr. Hamilton, a favorite actor.

BROADWAY THEATRE.—Three excellent pieces are announced for this evening, by the enterprising manager of this theatre. The first is the new drama called the "White Slave of England," which embraces in its cast nearly all the leading artists of the establishment. The next will be the amusing piece of "Who Speaks First?" and the entertainments will close with "Married and Settled." It is almost unnecessary to say that with such artists as Conway, Davidge, Mad. Ponisi, Mrs. Vernon, and Mrs. Abbott, the visiters will receive a rich treat in witnessing the performances.

NIBLO'S GARDEN.—Madame Henriette Sontag, who has had one of the most successful operatic engagements, so far as she has gone, is announced to appear to night in "Linda di Chamouni." Much was expected of this great artist prior to her arrival in this city, and we must candidly say expectation has not been disappointed. Badiali, whose rich and mellow tones are admired by every one, is an able assistant in giving full effect to the respective operas. Indeed, taking the present company as a whole, including the orchestral department, the efforts of the management cannot fail to be successful.

BURTON'S THEATRE.—The same intense desire as ever to visit this favorite Thespian temple exists in the minds of Burton's patrons. Scarcely is the door open when a rush takes place, and in a short time every seat is filled. Shakspeare's comedy of "Twelfth Night" will commence the entertainments this evening. The cast contains the names of Dyott, probably one of the best general actors in the country, Burton, Placide, Johnston, Fisher, Mrs. Dyott, Miss Weston and Mrs. Skerrett. The amusements will close with the farce of the "Phenomenon."

NATIONAL THEATRE.—The same untiring efforts which have characterized the career of Mr. Purdy since his managerial duties commenced, seem to lose nothing at the present season. He offers for the amusement of this evening a very attractive bill. The first in order is the drama called "Michael Earle," which will be followed by the fairy drama of "Kabri, or the Wooden Shoemaker." During the evening Miss Partington will dance, and the entertainments will terminate with the Irish drama entitled "O'Neal the Great," with Messrs. Jones, Clarke, Mrs. Nicholls and Mrs. Jones in the leading characters.

WALLACK'S THEATRE.—Where can an evening be whiled away with such unmixed pleasure and delight, as within the walls of this well regulated theatre? Mr. Wallack possesses both tact and talent, and knows well how to please the respectable audiences who frequent his establishment. His selections are admirable, and the artists he has engaged are all gentlemen of first rate talent. The opening feature of this evening will be "Old Heads and Young Hearts," in which Blake appears in his inimitable representation of Jesse Rural. All will terminate with "First Come First Served."

AMERICAN MUSEUM.—The bill of entertainment provided for this afternoon and evening, comprises a repetition of the grand spectacle of "Blue Beard," together with the farce of "Family Jars." "Blue Beard" has been put upon the stage in a style of great splendor, by the talented actor and energetic stage director, C. W. Clarke.

ST. CHARLES THEATRE.—The popular comedy of the "Serious Family," and the amusing farces of the "Husband at Sight," and the "Young Widow," are the pieces to be represented at this favorite theatre to-night. The casts include the appearance of Mr. Robinson, Miss Mitchell, and Miss Albertine.

POSTPONEMENT OF MADAME SONTAG'S BROOKLYN CONCERT.—The grand concert advertised to be given by Madame Sontag in Brooklyn, on next Saturday, has been postponed till that day week—Saturday, the 12th instant. To-night "Linda di Chamounix" is to be presented at Niblo's for the third and last time.

CIRCUS.—The Bowery amphitheatre has been well patronised this week, notwithstanding the inclemency of the weather. Wallett, the celebrated clown, is to appear again this evening, in conjunction with the entire troupe of gymnasts and equestrians. His benefit is to come off on Friday evening next.

CHRISTY'S OPERA HOUSE.—Christy's Minstrels continue to delight crowded audiences by their excellent delineations of the negro character. The programme for this evening is exceedingly attractive.

WOOD'S MINSTRELS, whose performances are always received with the utmost satisfaction by large assemblages, have provided another good programme for this evening. Horn, Briggs, Brower, Newcombe, and Campbell, will appear.

ROBERT HELLER.—This celebrated necromancer, whose Soirees Mysterieuses have always been extensively patronized, continues as successful as ever. He offers a good programme for this evening.

FISLEY'S THAMES.—This beautiful painting is to be exhibited again this evening, at 406 Broadway. It should be seen by the admirers of beautiful paintings.

BANVARD'S PANORAMA OF THE HOLY LAND.—The exhibitions of this splendid panorama are attended with as great success as ever.

MME. VALENTINI'S CONCERTS will be continued all this week, at Hope Chapel, Broadway. She sings with considerable judgment and taste. Mr. Hogan's accompaniment on the piano is excellent.

BALL'S MODEL OF SAN FRANCISCO has become quite an attractive exhibition in Broadway. It should be seen by every one.

ILLUSTRATED SCIENTIFIC LECTURES.—Dr. Boynton, whose lectures and entertainments have created quite a *furore* at the South and West, will commence a short course of his illustrated lectures at Metropolitan Hall, on Thursday evening. The high reputation of the lecturer, as well as the interest of his subject, together with the low price of admission will insure a full house. It will be seen by the advertisement, that a large number of the fashionable magnates of the city have solicited the course.

FINANCIAL AND COMMERCIAL.

MONEY MARKET.

TUESDAY, March 1—6 P. M.

We have no change of importance to report in the stock market to-day. The inclement, disagreeable weather, doubtless, tended materially to the inactivity of speculators. At the first board, Nicaragua fell off ⅜ per cent; Cumberland ⅛. Morris Canal advanced ½ per cent; Reading Railroad ⅜, and Sixth Avenue Railroad 1. At the second board, the market exhibited a more unfavorable complexion. Prices were all down, and a great deal of stock was pressing for sale. Nicaragua fell off ¼ per cent; Morris Canal, ¼; Harlem, ¼; Cumberland, ⅜; New Jersey Zinc, ¼; New Haven Railroad, ¼. Erie and Cumberland at both boards were more freely sold than any other fancies. Nicaragua Transit fluctuates a good deal from day to day, and the buyers and sellers appear to be pretty equally divided. The opinions which have recently been published, relative to the rights and privileges of this company, should be taken for just what they are worth, and no more. They were got up for the purpose of speculation—to depress the market value of the stock—and a bull operator can go to-morrow and get opinions of equal weight on the other side of the question. Anything can be proved by lawyers, doctors, or scientific men generally; and we have had so much of this kind of evidence lately that no one puts any confidence in it. Coal stocks hang heavy on the hands of holders. They have had their day, for a time at least. The really good ones will come up again gradually, and ultimately take their position among the first class stocks. We refer particularly to those coal companies which depend entirely upon mining coal for dividends. The report of the Cumberland Coal Company has done more to destroy public confidence in this class of stocks than anything else we know of. This concern has turned out to be a perfect skeleton—all pretension and outside show. An effort was made, by patching up four rotten concerns, to make one good one, and it failed, as any sensible person might have anticipated. In December last, the Cumberland sent to market between 2,700 and 3,000 tons of coal per week. For the week ending February 5, 1853, it sent down 1,276 tons; week ending the 12th, 1,044 tons; and week ending the 19th, 1,049 tons. It will require sharper financiering to keep this company in operation, at this rate of shipment of coal, than has been resorted to yet, and that is saying a great deal. The financial operation in the bonds of the company, a short time since, shows that pretty sharp practice has been carried on there. The bonds were issued to certain parties at sixty-nine per cent; and not long afterwards a new issue of stock was made, at 75 per cent, to pay off the bonds at their par value. It is easy to figure up how much the company lost by this movement. This system of financiering has been pursued throughout, and the public can judge what condition the company must be in at this moment.

After the second board, this afternoon, the market was very much depressed. Nicaragua was offered at 54¼, and Cumberland at 54, without finding sellers. Prices must go much lower before they become fixed.

The receipts at the office of the Assistant Treasurer of this port to-day, amounted to $97,055; payments, $205,960 55—balance, $5,268,262 36.

There was a large attendance in the Exchange to-day, at the sale of copper ore belonging to the North Carolina Copper Company. Considerable interest was manifested by those present, and the bidding was quite spirited. One hundred tons of copper pyrites, about thirty per cent ore, were sold to the Revere Copper Company of Boston, at $6 for each per cent, being equal to $180 per ton, cash. This was the first public sale of the North Carolina Copper Company's ore, but we learn that hereafter they will be of frequent occurrence. The mines are worked with a great deal of activity, and the production of ore is very large.

The proposals for $2,500,000 of the bonds of the Parkersburg Railroad Company—$1,500,000 guaranteed by the city of Baltimore, and the remainder by the Baltimore and Ohio Railroad Company—were opened this afternoon. The total bids were for $5,340,000, from par to 101. 50. The loan was awarded as follows:—

$1,500,000 Duncan, Sherman & Co., 100. 90 per cent.
1,000,000 C. H. Fisher............101 "

The steamship Humboldt, at this port from Havre and Southampton, brings four days later news from Europe. The accounts are, on the whole, rather favorable, both in a financial and commercial point of view. There were indications in London of an easier money market. Detailed reports of the markets, &c., will be found under the proper heads.

The following table will show the coinage at the mint of the United States for the two months of 1853:—

U. S. MINT PHILADELPHIA—COINAGE AND DEPOSITS.

	January.	February.	Total.
Double Eagles..	$4,024,460 00	$2,300,800 00	$6,325,260 00
Eagles..........	114,600 00	202,330 00	316,930 00
Half Eagles.....	137,880 00	..	137,880 00
Quarter do......	239,775 00	129,715 00	369,490 00
Dollars.........	292,673 00	298,435 00	591,108 00
Total Gold.......	$4,809,388 00	$2,931,280 00	$7,740,668 00
Quarter Dollars..	..	11,050 00	11,050 00
Dimes...........	..	9,500 00	9,500 00
Half Dimes.......	..	6,750 00	6,750 00
Three cents......	93,750 00	81,000 00	174,750 00
Total Silver.....	93,750 00	108,300 00	202,050 00
Cents...........	3,861 00	2,000 00	5,861 00
Gold, silver, and copper........	$4,906,999 00	$3,041,580 00	$7,948,579 00
In 1852.........	4,242,336 00	3,043,830 00	7,286,186 00
Decrease this y'r	..	2,250 00	..
Increase this y'r	$664,643 00	..	$662,393 00

The number of pieces coined in February, 1853, was 3,659,835, of which 485,594 were gold, 274,200 silver, 2,700,000 three cent pieces, and 200,031 cents.

The gold bullion deposited in February, was—

From California.........	$3,517,000 00
From other sources......	31,000 00
Total........	$3,548,000 00
Silver bullion deposited.......	$13,560 00

The deposits of the precious metals for January and February, were—

	1852. Gold.	1852. Silver.	1853. Gold.	1853. Silver.
January......	$4,161,688	$17,650	$4,962,097	$14,000
February.....	3,010,222	21,200	3,548,000	13,560
Total....	$7,171,910	$38,850	$8,510,097	$27,560

The decrease of silver deposits in 1853, $11,350; increase of gold deposits $1,338,187.

The annexed is the general statement of the condition of such of the banks of the District of Columbia as have reported to near the 1st of January, 1853 gathered from official sources at Washington:—

BANKS IN THE DISTRICT OF COLUMBIA.

	Washington.	Metropolis.	Farmers' & Mchics, Georgetown.	Totals.
Capital.........	$205,890	$352,258	$289,580	$847,728
Loans and disc's..	476,237	694,347	346,056	1,516,641
Stocks..........	55,412	4,973	..	60,386
Real Estate......	58,379	25,522	31,914	115,816
Other investm'ts.	14,923	6,780	56,547	78,250
Due by other bks.	44,396	83,252	32,860	160,509
Notes other bks..	65,125	27,345	10,629	103,100
Specie..........	65,504	85,084	24,957	175,546
Circulation......	92,768	84,757	66,355	243,881
Deposites........	379,247	408,177	104,461	891,885
Due other banks..	8,536	66,974	32,107	107,618
Other liabilities..	93,537	15,138	10,460	119,136

The Bank of Washington reported January 1st, 1853.
Bank of the Metropolis reported January 4th, 1853.
Farmers' and Mechanics' Bank, Georgetown, reported January 4th, 1853.
Patriotic Bank of Washington city, has not reported.
Merchants' Bank, of Georgetown, has not reported.

The Legislature of Maryland having granted permission to the Canton Company to issue $25 shares, in lieu of the old, there will, of course, be quadruple the former number, but it is, nevertheless, anticipated, inasmuch as the nominal value of the share is thus materially reduced, that the speculative character of the stock will be greatly increased. The company have a valuable property, and so located, adjoining Baltimore, that any addition to the population of that city, in an eastern direction, can only be accommodated on the Canton lands. Of the capital stock, a large majority is now owned in Baltimore, the capitalists of that place having recently made investments, based on their local knowledge, and we may, therefore, conclude that henceforth all interest in this concern will gradually be withdrawn from our market.

Stock Exchange.

$76200	U S 6's, '67..	120½	300	shs Phœnix M Co.	21
2140	Indiana 2½..	56½	100	do......b60	21½
18000	Penn St 5's, s3	98½	50	do.... btwk	21½
3000	E 1st Mt Bds.	117	200	do.......b3	21½
1000	E R Cv Bd, '71	97½	30	N Creek Coal Co.	2½
57	shs E & H Canal.	125	200	do..........	2⅝
30	State Bank......	108¾	50	C & O S T & M Co..	15
30	Hanover Bank...	104	500	Potomac Cop Co.	3½
10	Continental Bk..	99	50	Hud Riv RR..s30	66½
100	Morris Canal..s3	21½	150	do.........	66½
50	do.......b3	21½	450	Erie RR......b30	87½
50	do......b30	21½	100	do.........	87½
24	N Am Ins Co....	121	300	do.......b3	87¼
50	People's Ins Co..	97	100	do......s10	87¼
50	Canton Co.....s3	128½	400	do......b60	88
150	do..... b15	124	700	do.......b3	87½
200	Edge Land Co.b3	6¼	1150	do.......s3	87½
100	do......b30	6¼	50	do......s60	87½
300	do.........	6⅜	50	do......s60	87½
800	Mont Mining....	3¼	200	Harlem RR......	67½
550	do......b60	3½	100	do.......s3	67½
100	Ports D Dock....	6	200	do......b60	68½
100	Nica Trans Co.s3	35	300	do......b30	68
300	do......b30	35¼	100	do.........	67⅝
200	do.......s3	34⅞	30	do.........	67⅞
300	....	34¾	75	Roch & Syr R.b3	129
100	do......b30	35½	20	N J RR	136
50	do.........	34⅝	50	Nor & Wor RR.s3	51½
100	Penna Coal Co..	113½	50	do......b60	52½
75	Cumb Coal Co.b3	55⅝	100	Reading RR.....	90½
775	do.........	55¼	50	do......s30	90½
525	do.........	55⅛	50	do.......s3	90⅞
100	do......s10	55	150	do.......s3	91
250	do......s60	55	100	do.......b3	91½
100	do......b60	56	300	do......s60	90½
100	do..... b30	55½	18	N Y & N H RR..	111
50	do......snw	55½	25	Sixth Avenue RR	120
50	Phœnix Ming Co.	21			

SECOND BOARD.

$4000	California 7's..	82	50	shs Canton Co...	124
1000	N Y St 6's, '64.	120	50	Hud River RR...	66½
125	shs N A Trust...	20	75	do.........	66⅝
100	Morris Canal....	21	8	Rome & Wat'n R.	105
50	Nic Tran Co..b30	34¾	200	Erie RR.......	87¾
500	do......b30	35	100	do......b10	87¾
250	do.........	34½	250	do......b60	88½
200	do......s30	34½	100	do......s60	87⅝
100	Phœnix Ming Co.	21½	12	do.........	87⅝
400	Harlem RR......	67¼	100	do.........	87½
700	Cum Coal Co..s60	54¾	350	do......s60	87⅜
100	do......b60	55½	15	N Y & N H RR..	110½
100	do.......s3	54⅝	150	N & Wor RR b60	52½
100	do......s30	54½	100	Mich Central RR.	107
100	do.........	54½	200	Reading RR.....	90¾
200	Potomac Cop Co.	3½	200	do......s60	90½
500	N J Zinc........	12⅝			

CITY TRADE REPORT.

TUESDAY, March 1—6 P. M.

ASHES.—Sales have been made of 45 bbls., at $4 68¾ a $4 75 for pots, and $5 75 for pearls, per 100 lbs.

BREADSTUFFS.—Flour displayed no new feature of an interesting character. The day's operations amounted to 9,800 bbls. The day's movements reached 8,800 bbls. Sour at $4 56¼ a $4 68¾; superfine No. 2, $4 62½ a $4 75; fine rye, $4 62½; superfine do., $4 87½; ordinary to choice State, $5 06¼ a $5 31¼; superfine Canadian, in bond, $5 12½ a $5 25; mixed to fancy Western, $5 25; common to good Ohio and fancy Genesee, $5 31¼ a $5 43¾; fancy Ohio and mixed to good Southern, $5 50 a $5 68¾; extra Western, $5 62½ a $5 12½; extra Genesee, $5 50 a $6 25; favorite Southern, $5 68¾ a $5 94¾, and fancy do., $6 a $7 50. We heard that 170 bbls. Jersey meal found buyers, at $3 31¼ per bbl. Some 6,500 bushels Southern red wheat brought $1 15 per bushel. Rye was quiet, at 91c, and barley, at 70 a 74c. per bushel. State and Western oats were more freely tendered, at 47c. 49c. per bushel. Corn ruled dull and heavy. The day's transactions did not exceed 30,000 bushels inferior to prime Southern white and yellow, at 60 a 65c per bushel.

COTTON.—The Humboldt's advices have caused an easier market on the lower styles, the better grades being unchanged, with sales of 1,200 bales, at 9¼c. for low middlings, 9½c. a 9¾c. for middlings classed out strictly, and 10c. a 10½c. for good middlings of all growths.

COAL.—250 tons Liverpool orrel were procured at $10, on four months credit—a reduction.

COFFEE.—Sales were made of 80 bags Java, at 11½c; and 200 Maracaibo and Rio, at 9½c. a 9¾c. per lb.

COPPER.—About 10 000 lbs. old were disposed of, at 30c. a 31c. per lb.—an advance.

FRUIT.—There have been 500 boxes bunch raisins taken, at $2 75.

FREIGHTS.—Rates were steady, with light engagements. 1,000 bbls. flour were engaged for Liverpool, at 2s. 9d., though there were some vessels asking 3s. Grain was taken at 9 a 9½d. Cotton at 7-32d. and some vessels asked ¼d To California, 6,000 feet of measurement goods were engaged by the clipper Highflyer, at 75c. per foot. The range was from 55 to 85c. There was no change to notice to Australia, or to other ports.

HAY ruled quiet and languid at $1 a $1 12½ per 100 lbs.

LATHS.—Eastern were eagerly sougth after at $2 50 per thousand.

LIME.—There were sales made of 4,500 bbls. Rockland at $1 for common, and $1 50 for lump, per bbl.

MOLASSES.—A lot of 50 hhds. Cardenas brought 27c. per gallon.

NAVAL STORES.—We have only to notice sales of 1,300 bbls. spirits turpentine on private terms.

OILS.—About 3,000 gallons linseed were obtained at 74c. a 75c. per gallon.

PROVISIONS.—Pork tended downwards. The sales were confined to 300 barrels new, at $15 50 for prime, and $17 for mess, per barrel. Pickled meats moved to the extent of 180 packages, at 7¼c. for shoulders, and 10c. for hams, per lb. The sales of lard amounted to 300 pkgs., at 10c. a 10½c. per lb. Beef was in fair request; the sales reached 250 bbls.; country prime at $5 50 a $6 25; city do. at $7 a $7 25; country mess at $9 75 a $11 25; city do. at $13 per barrel; and prime mess at $20 a $22 per tierce. Butter was in good demand, at 13c. a 17c. for Ohio, and 17c. a 21c. for State, per lb. Cheese continued to realize 8c. a 9c. per lb.

REAL ESTATE.—Sales at auction by Cole & Chilton—House and lot No. 88 Columbia steet, Brooklyn, extending through to Furman street, 25.3x150, $17,900; 1 lot on Plank road avenue, corner Ninth street, 25x102.6, $420; 1 lot adjoining, $300; 2 lots do., $275 each; 1 lot on Ninth street, 102.6 feet from Plank road, 25x100, $200; 1 lot adjoining, $275; 2 lots do., $325; 2 lots do., $300; 3 lots do., $290; 1 lot on Eleventh avenue, corner Ninth street, 25x100, $275; 6 lots on Ninth street, 125 feet from Eleventh avenue, Brooklyn, 25x100, $150 each; 5 lots on Eleventh avenue, corner Ninth street, 25x100, $125 each; 1 lot on Eleventh avenue, corner of Ninth street, 25x97.10½, $225; 1 lot adjoining, $130; 3 lots do., $125 each; 1 lot on Ninth street, near Eleventh avenue, $130. By A. Muller.—1 three story brick house and lot, 389 Eighth street, 50 feet from avenue D, lot 21.6x46.11, $2,900; 1 do. do. adjoining, same dimensions, $2,400; three-story brick house and lot No. 21 Sixth avenue, opposite Amity street, lot 17.6x100, $7,350; 3 lots on Fifty-ninth street, near Seventh avenue, 25x100.5, $500 each; 1 lot on Troy street, between Greenwich and Washington, with two brick houses on, $4,500; three-story brick house, 156 Chambers street, between Greenwich and Hudson, $23,000; three-story brick house and lot adjoining, $23,000; three-story brick house and lot No. 115 Hester street, lot 21.3x75, $6,650. By E. H. Ludlow.—Lease of lot No. 28 Washington square, $11,000; three story house and lot 94 West Thirteenth street, between 6th and 7th avs., $9,100; 1 house and lot adjoining, $8,600; 1 house and lot No. 128 Greenwich street, 20x80, $11,050; 1 lot on Twenty-seventh street, 163.6 from Fifth avenue, 36.6x98 9, $5,600; houses and lots Nos. 239 and 241 Bleecker street, near Cornelia street, 15.8½x66, $5,150 each; 1 lot on Amity street, corner of Sixth avenue, 20.6x50, $5,400. By Anthony J. Bleecker—House and lot No. 9 St. Marks place, 32x122½, $19,750; house and lot Nos. 66 Pearl street and 32 Stone street, $21,900; house and lot No. 69 Warren street, 25x75, $7,800; house and lot No. 36 Centre street, 27x100, $5,850; house and lot No. 61 Sullivan street, 21x80, $4,000; house and lot corner Suffolk and Stanton streets, $5,000; 2 lots on Eleventh street, 215 feet from Second avenue, 25x94.9½, $4,600 each; 1 lot in Tenth street, near Stuyvesant street, do., $4,500; 1 lot adjoining, $4,750; 1 lot on Ninety-fourth street, 100 from Seventh avenue, 25x100, $260; 7 do. adjoining do., do., $250 each; 5 do on Fifty-third street, 200 feet from Third avenue, 25x100.4, $900 each.

SOAP.—150 boxes Castile found buyers to day, at 10¼c. per lb., usual terms.

SUGARS.—There were 150 hhds Muscovado sold to refiners, at 4¾c. per lb.

TALLOW remained very dull, at 9½c. a 9¾c. per lb., cash.

TOBACCO.—We heard that 100 hhds. Kentucky were bought at 6c a 8c. per lb.

WHISKEY.—Sales have been made of 450 bbls., at 23c. for Jersey, and 23½ for prison, per gallon.

RECEIPTS OF PRODUCE.

BY ERIE RAILROAD—1,351 sides leather, 38 bbls. provisions, 162 dressed hogs, and 420 bbls. flour.

BY NEW HAVEN RAILROAD—18 sides leather, 21 bbls. whiskey, and 60 boxes cheese.