THE STANWIX HALL TRAGEDY.

Trial of Louis Baker for the Homicide of William Poole—Evidence for the Defence.

SEVENTH DAY.

COURT OF OYER AND TERMINER.

Hon. Judge Roosevelt presiding.

THE PEOPLE VS. LOUIS BAKER.

DECEMBER 4.—At the organization of the Court this morning the Judge said that he perceived in the report Mr. Russell is made to say that in the indictment against Poole and Williams for an assault and battery with intent to kill, Poole was convicted and Williams died. Of course it should be Poole died and Williams was convicted.

Counsel said, certainly. It was a mere transposition of names.

Mr. Clark, for the defence, said—If the Court please, we propose to go on with the case without any formal statement of the facts, and shall therefore reserve our comments on the evidence until a later hour of the trial. It is our design to now elicit from the witnesses such further facts as may tend to throw light upon the transaction, and that testimony we wish to elicit from the lips of those who are indicted as accessories to the felony.

The Court said that the Grand Jury had indicted Baker as the principal in the murder, and included Van Pelt, Irving, Morrissey, Lynn, and Hyler as accessories.

Mr. Clark—I do not propose to now say a word of Baker's case. It must be submitted to the jury on the evidence already introduced and which we will introduce. But it is my purpose to call the attention of the learned counsel for the prosecution to what must have suggested itself to their own minds. Your Honor is aware that, according to the law of New York, none of the parties indicted can be witnesses for the accused; but in some of the Western States, without reference to the common law, the parties indicted are admitted as witnesses, in order that the prosecution shall not exclude from the jury in any case the truth of the transaction. But, under the law of New York, it would appear that it is the rule how little, and not how much, light shall be meted out to the jury. I am here in the case of an affray where one of the parties is accused of murder, and the others on the stand as witnesses. But this can always be done in a case where innocent parties are included in the same indictment as defendant, although the took no part in the affray. It is, however, in the power of the prosecuting officer to remove the effects of the indictment, and let them be examined for the defence. And even if the prosecuting officer should avail himself of it, it was the intent of the Legislature to give the Court the power, the supervisory power, to regulate it so that the prosecuting officer cannot exclude all the truth which they have it in their power to do. I will not now say anything about Baker, as a *prima facie* case has been made on a part of the transaction, which the jury must pass upon. It is a well known fact, and known to the prosecution, that a Coroner's jury was empannelled to try the question of Poole's murder; they were brought together at a time of great excitement, and perhaps I am not out of the way in saying that some of them were afterwards pall bearers at Poole's fune al. They found a singular verdict, and in extraordinary language. While they found Baker guilty of having murdered Poole, they found Morrissey and the others were accessories. This was done before the excitement had lulled, and before the men had time to scatter to their homes and find out how little they knew about the matter. These defendants were found guilty long before they were tried, or any fair investigation of the facts, which must throw great difficulties on the trial of the case. About that time I was employed in the case, and brought it before Judge Cowles, and from the testimony taken at the Coroner's inquest, or before the Grand Jury, it was clear that some of my clients took no part in the affray. It had also came before the lately deceased and lamented Judge Morris, who did not hesitate to say that the conduct of the Grand Jury was most flagrant, and notwithstanding the opposition of the District Attorney he admitted Irving to bail. I now propose that Morrissey, Irving, Van Pelt, Hyler and Lynn be discharged from the indictment, there being not a particle of evidence against them.

The Court—I suppose the reason substantially is to ask the Court to direct a *nolle prosequi*, in order that they may be used as witnesses. That is a question yet to be decided. You do not, I suppose, mean that they could be used as witnesses without getting rid of the indictment.

Mr. Clark—Not at all; but is a man to be condemned because a Grand Jury has indicted him? It is important that these persons should be examined, because they have a knowledge of the facts which, if given in evidence, would set men right in relation to the transaction. The indictment was found in a storm, and that storm has passed away, and we can now take a clear and dispassionate view of the subject.

The Court—The question for me to decide is, can I sit here to repeal existing laws, no matter how my own opinion may be on the subject?

Mr. Clark read part of Judge Cowles' opinion on the case, and said how far was Irving concerned in the affray? He was not present at the time of Poole's death; he was there at nine o'clock, and interfered to prevent a collision between him and Morrissey, and he went home; and what was there in his case on which the Grand Jury could found a tittle of truth to indict him? So also in relation to Van Pelt and Linn; they straggled in as mere boys, and did nothing except to interfere with Paudeen, who, it was shown, was carrying on a crusade on his own account. What did these boys do but endeavor to prevent a collision between Paudeen and Poole? They were both hit, and left the house. If there was a conspiracy against Poole, why not put them on the stand? If there was they can tell it; but the prosecution wants to prevent it. If their evidence would go against Paudeen, Turner and Baker, the case would be otherwise. Is it probable that any jury would convict Hyler or Van Pelt or Lynn? That no part of the testimony goes to implicate them, no intelligent man can doubt. I will show the Court that it was the intention of the Legislature to prevent a party from being deprived of the necessary testimony for his defence. But by that act of the Grand Jury, including so many of our necessary witnesses in the indictment, it would be prevented if there was no remedy for it. Among the acts relative to criminal offences there is one which lets every man have a separate trial. In this case, many of those who are indicted with Baker are just as innocent as any man on that jury, and we did not like to be put on trial along with Baker at a time when they thought a fair trial impossible; and he has been put on his trial alone. There are other parts of this statute which give great powers to the prosecution, unless the District Attorney gives consent to have any particular prisoner discharged. I submit that if the prosecution keeps out all the truth, and induces the Grand Jury to bring in so many parties to the indictment, it would be impossible for the truth to come out. I will not take the responsibility of saying who are innocent or guilty—that belongs to the jury; but if the prosecution says I will hold them so that they cannot be witnesses, this Court can remedy it, and take upon itself the responsibility of directing innocent men to be discharged from an accusation without one tittle of testimony to sustain it. The indictment is pending before this Court, and it has jurisdiction over the matter and over the District Attorney. It is manifest that Baker's defence is that what he did was to defend himself from the savage assault of men who intended to take his life with firearms. Mr. Clark here quoted from the statute, and said it is manifest that when there is not sufficient testimony to put the parties on their trial, it is the duty of the Court to discharge them. Will the prosecuting officer say, on his honor as a gentleman or a man, that there is any evidence to put Morrissey or Lynn on trial?

In reply to a remark from the Court, that counsel for defence had moved for a separate trial for his client,

Mr. Clark said—No, I did not; I proposed to have them all tried together; but some of their counsel refused to have them all tried with Baker; and no man could stem the torrent of public opinion which existed against Baker. It was Baker's wish that they should be all tried together, but the others refused it. I need not press the question further. It must be clear to the prosecution that they owe something to truth and justice, and unless they can in good faith say that there is sufficient to put the parties on trial, they should at once consent to their discharge in order that Baker may have the benefit of their testimony.

The District Attorney said—We proposed to bring all the parties to trial, and I remember asking my learned friend do you wish or not to have separate trials? What took place between him and other counsel I do not know. But if our offer to try them all was accepted, the contingency alluded to by my learned friend might have occurred, and it might have been your honor's duty to say that the indictment was so defective in law that you would order them to be discharged and then they might give evidence. These are facts which will be laid before the jury, showing that the prosecuting officer has a right to hold these men to the indictment; but as they are not on trial, this evidence must at present be shut out.

Mr. Brady said he understood that the counsel for Irving was in Court, and that he never consented to his being tried with Baker.

Mr. John A. Develin, counsel for Irving, said—Mr. Clark applied to me to have Irving included in the trial, and I applied to Irving and he peremptorily refused.

Mr. Whiting said—We proposed to try them altogether, and if the gentleman who represents Baker had consulted with counsel for the other defendants, and obtained their consent, it would have been done. There was sufficient notice given, and if counsel for the defence proposed to have some of the others tried first, or if they said it would be necessary to use Hyler as a witness, the court might have ordered any other of the defendants to be tried first. But I understood the gentlemen for the defence wished to have Baker tried first. We have given no testimony except in relation to Baker, and excluded everything done in the absence of Baker. The only testimony we gave in relation to the other parties was to show with what motive the prisoner went to Stanwix Hall.

The Court—In the account of the proceedings of the first day it is said that Mr. Clarke said Baker was ready for trial, and moved for a separate trial, and waived the reading of the indictment.

Mr. Brady said—The fact alluded to may be doubtful, as far as I know, from the circumstance that I was not connected with the case until recently, and my friend has more familiarity with it. But I know that your Honor asked "was there a separate trial demanded?" and I said yes. In doing so I represented none of the others who were indicted except Irving.

Mr. Brady went on and made a brief but able argument to show why the Court should interfere in the matter, and in the course of his remarks said, the great mistake that was committed was, not in dicting all the parties for a riot, instead of indicting the accused for murder. When the case was brought before Judge Cowles, who I hope will be retained on the Bench which he so much adorns, and who has already made himself respected and beloved by the Bar, he exhibited great intrepidity, coolness and good sense, and did not hesitate to say that it was a great error in the Grand Jury to have indicted them.

The Court said—It was a well established rule of law, whether right or wrong, that a defendant in a criminal case cannot be examined for himself, nor can any of his colleagues be examined for him. Where two or more parties are indicted as participants in the same offence, and the prosecution has announced its testimony to be through and it is shown that it is not sufficient, and evidence, without an offer on the part, even without any offering any evidence for the defence, as to any part of the defendant's conduct, the Court might say that the defendant, against whom there was not sufficient evidence, be discharged from the indictment, and then it would be proper to examine him as a witness. But in this case the prosecution is going on, not against all the defendants, but against one only, and under the rule that no evidence but against that defendant alone can be received. And the prosecution has said they have put forward their whole case as against the other defendants. I shall assume that such a result will follow, and may come to such a conclusion, that the case against the defendant on trial is not the whole case as against the other defendants. Would it then be proper for me to give a one-sided decision on the evidence against this defendant only? It may be that as the defence gets out their evidence, that it would be proper for the District Attorney to willingly consent to their being discharged; and it might be proper for the Court, in its discretion, to grant it, and the party might then be examined. I will observe that in my view of the matter it would be more politic for the Legislature to let all the testimony come in, and let the jury give it all the weight it was entitled to, neither believing or disbelieving all they heard, but giving it the weight which it deserved. In civil cases, under the new code, co-defendants are examined for co-defendants. But the Legislature have not taken up the criminal code, and it remains inchoate, and left as where we were, and it is not my province to infuse into it my peculiar notions, and yet not my peculiar notions, for they are common to many. My duty is to see what the law is, and apply it. It is not my duty to give an opinion in the case until all the testimony against the other parties has come out so that the Court can judge of it.

Mr. Clark—Then we will proceed at once to adduce our evidence, and we must examine witnesses as they answer, without reference to order.

Geo. W. Isaacs was then examined by Mr. Clark—I am clerk of Fulton market; I knew Poole; I know Baker; I was at the Mayor's office some time in January, soon after Mayor Wood's election; I went in with Poole; as we were going out we met Baker in the passage; Poole said to me, as he was facing Baker, "I say, old man, how do you think that head would look without ears or nose on it?" I said to him, come on; Baker said to him, "you had better let that head and ears alone"; Poole said "I am going to take that nose and ears off, and make a pot of soup of that head"; (Laughter.) Baker said nothing but "you had better let that head of mine alone"; Poole then put his finger to his nose, and said, "I'll make you taste my mutton yet."

Cross-examined by Mr. Whiting—Poole did not go to the Mayor's office to make a complaint against Baker; Poole asked me where is that Mayor; I said if he wanted to see him I would introduce him to the Mayor; I said to him, what do you want with the Mayor? he said, "when I come out I'll let you know;" I pointed out the Mayor to him; he went into the private office; I do not know what occurred between the Mayor and Poole, but Poole said something about a policeman making a complaint against him for selling liquor on a Sunday; I had heard that Baker and Poole were at variance—that they were enemies.

To Mr. Clark.—Poole told me what his business at the Mayor's office was; it was not to make any complaint against Baker; it was in reference to a complaint made by an officer against Poole for violating the corporation ordinances by selling liquor on Sunday.

James McDonough deposed—I reside at 170 Fourth street; I am a coach proprietor; I was at Stanwix Hall on the 24th of February last, at 12 o'clock at night; I was in the habit of going there every night, except Sunday's, to take home Mr. Dean and Mr. Deagle; I used to take Poole home sometimes; Poole was there that night; he was a friend of mine; I was in the house about an hour before Baker came in; when I got there Poole was a little excited, talking over the affair he had with Morrissey; he said Morrissey had "tasted his mutton once, and he did not think he would wish to taste it again;" Poole, Campbell, Ingersoll and I were drinking wine at the bar when Baker came in; that drink was at Mr. Poole's invitation.

Q. Was anything said of Irish sons of b——s? A. Poole said that "the Irish son of a b——h had tasted of his mutton and he would not like to taste of it again."

Q. Who came in? A. Baker, Turner, Hyler, Linn and Van Pelt came in and Paudeen last; when they came in we were a kind of scattered on the end of the bar; when Paudeen came in Poole looked at him with a kind of a down look, and Paudeen said, "You black muzzled son of a b——h, what are you looking at?" Paudeen then asked him "was there any fighters there big enough to fight him?" Poole made no reply; Mr. Dean came from behind the bar and said "he would have no fighting in his house, and that Paudeen should go out;" Paudeen said, "Serve every one else as you serve me—put Poole out and I'll go out;" Mr. Dean went out of doors, and was out for a little space of time; during his absence Paudeen shoved over and caught hold of Mr. Poole by the coat.

Mr. Crocheran, a juror—Was Mr. Dean the first person who went out after Paudeen came in? A. He was.

Mr. Clark—Are you positive of that? A. I can't be positive, because when Paudeen struck Mr. Van Pelt, and kicked at Linn, they went out, and they may have gone out before Mr. Dean.

Q. Who was the first man that interferred? A. Hyler; at the time that Paudeen had hold of Mr. Poole, Campbell was leaning over the bar between them, and Turner said to Poole, "never mind him, he is drunk, there will be no fighting here;" Poole got round to the end of the bar next to the oyster box; Turner said, "if that's your game let us have it;" at the same time he pulled his pistol out and presented it over at Mr. Poole; Paudeen did not know whether to interfere, or not; Turner caught hold of Paudeen by the left hand, and as he was turning around his pistol went off and shot himself in the arm; Turner's coat was on fire, and I went over and brushed the fire off his coat; I thought he was going to get weak, and I caught him and let him down on the floor; I laid hold of his pistol, but he held on to it; at the same time a ball passed by my ear. [Witness descends to the floor, and describes his position on his knees, leaning over Turner.]

Q. Who stood in the direction from which that ball came? A. Mr. Poole stood in that direction.

Q. What was Turner attempting to do? was he trying to get out of the room? A. At the time he was not able; he was rather weak; I should say that ball came from where Mr. Poole stood; at the time Turner's pistol went off Paudeen went out, and I did not see him there after; Van Pelt and Hyler had gone out before; I could not say positively who went out of doors; after Turner's pistol went off, Van Pelt and Linn and Paudeen went out; at the time Paudeen went out Poole was standing between me and the door; I don't know who went out after Paudeen, because some time elapsed.

Q. Where did you go? A. At the time the ball came so close to me, I took into the closet. (Poole's coat produced.) I can't say that these holes in the shirt were in the range of the shot that came by my ear. (Objected to.) When I looked out of the closet I saw six Boiler on the floor under Poole, and Cy. Shay and Jake Ackerson standing near, and all of them firing; Lozier was standing at the counter; I don't know that they were firing at Baker; I saw Lozier and Poole making towards Baker; up to that time Baker had done nothing; the next thing I saw was Baker down, Poole on top of him, and Cy. Shay and Jake Ackerson firing; Turner was out of doors at the time; I recollect Turner discharging two shots; one of them, the first, went into his arm; at the time the shot came by my ear, Cy. Shay was standing near Baker; Paudeen was out of the house; when Turner fired the second shot he was on the floor; pretty much all the time Poole had his hands in his pockets; at the time he went into the recess he had his hands behind his back, under his coat tail; before that he had them in his pantaloons pocket; at the time he was at the bar I thought he took something out of his breast pocket and put it in his pantaloons pocket; all this occurred before Turner pulled out his pistol and said, "if that's your game let us have it."

Q. Did you hear Turner say to Poole before he (Turner) fired his first pistol, "You're going to shoot, you son of a b——, are you?" Objected to.

The court permitted the question to be put simply, "Did he, or did he not, hear such an expression made use of?"

Witness continued—At the time I got into the closet, Harris, Andrews and Campbell were there; Cy Harris had a pistol, and Andrews made the remark, "For God's sake, take care, there is enough firing outside;" I looked out and saw Baker down under Poole, and when he got up he made for the door; Charley Lozier laid hold of his coat; he got out; I heard a carriage start, and I went out to see if it was mine; came in again and saw Cy Shay holding Poole up, and his head hanging at one side; I went for Doctor Cheeseman, and brought him to Stanwix Hall; I then went for Poole's brother-in law; Corkey Jack came with me; on the way up he showed me a pistol, and said he found it on the floor, and that two of the chambers were discharged; I was not subpoenaed before the Coroner's inquest; I was taken by an officer called "Soldier Jack," and brought to the Coroner, and he asked me what I knew about it, and I told him I knew all about it. Mr. Whiting objected.

Mr. Clark said he wanted to show that this witness, who said that he knew all about the affair, was taken by an officer, held all night, and when he went before the Coroner next morning, he was told he would be sent for, and that he never was examined.

Witness continued—Coroner Hilton asked me a few questions, and locked me up all night, and told me to be in his office in the morning; I went there; he asked me a few questions, and I told him I knew all about it; he (the Coroner) said he would send for me if I was wanted; I was not sent for.

Question by the Court—Explain what you did see done when Turner said, "if that's your game, let's have it?" A. I thought Poole had pulled out a pistol; I did not see it.

To Mr. Clark—I saw a pistol in Baker's hand when he was going out of doors; he had no pistol before Lozier and Poole made up to him; I did not see any one have hold of his hair; the room was pretty full of smoke, and it was very hard to see.

Mr. Cocheron (a Juror)—Was the room full of smoke when Baker was under Poole? A. Yes; I could see the object.

To Mr. Clark—There was a good deal of smoke, but there was not so much but I could tell which was which.

To the Court—I was about three feet from them; the door of the closet was open.

Witness explained to the Court on the diagram that Poole and Baker lay in almost a direct line with the projection of the counter.

Mr. Clark—Did you see where Poole's hands were when he was on Baker? A. Well, I did not take particular notice; I saw Cy Shay and Jake Ackerson's hands; the others I could not see; I could see a pistol in their hands.

To Mr. Wing (a Juror)—The door of the closet swung inside.

To Mr. Clark—I could see the flash of a pistol; I saw the flash of a pistol from Cy Shay's hands; I don't think I saw any other flash.

To Mr. Brady—I don't know where Corkey Jack is.

To a Juror—Corkey Jack came back with me in the carriage.

To Mr. Brady—Corkey Jack showed me the pistol on the way up to Poole's brother-in-law's house; he put it in his pocket.

Cross examined by Mr. Whiting—Dean went to the door after Paudeen came in; I can't say that he was the first man that went to the door after Paudeen came in; I might have said so on my direct examination until I thought of myself; there had been no clinching of Paudeen and Poole before Mr. Dean went to the door; there were words between them; I don't recollect that Mr. Dean went towards the door immediately after saying he would have no fighting there; I read part of the testimony every day; I read Mr. Dean's testimony; I read that part where he said he was the first man who went to the door after Paudeen came in.

Q. To your best recollection was not Mr. Dean the first who went towards that door? A. I can't say; Baker was the first man came in and Paudeen the last; I can't say if the shutters were up when they came in; I should think they followed each other right in; I don't recollect that there was any space of time between Paudeen's coming in, when Baker came in he went up to the bar and asked them to take a drink; Baker passed Poole and Campbell in going to the bar; I thought he asked all in the room to drink; I think no one but Turner and another person drank with Baker; Baker had no overcoat on at the time I saw him getting off the floor; Turner had a talma on, Mr. Poole had an overcoat on; Paudeen asked Poole to fight him, and Poole told him he was not worth it.

Q. When Paudeen took hold of Poole did he reach across Mr. Campbell? A. He did: I saw Paudeen spit in Poole's face three times; that was after Poole said "he was not worth it;" he had hold of Poole's coat at the time he spit in his face.

Q. Did Paudeen ask Poole to go out to the yard and fight? A. No, he asked him to go out in the street and fight.

Q. What did Poole do after Paudeen spit in his face? A. He did nothing until Turner broke Paudeen's hold; Poole had his hands in his pockets all the time; when Turner broke the hold Poole went round behind the counter; Paudeen followed him up; Poole was a kind of backing up; Paudeen appeared to be inclined to go in and follow up, and yet afraid to do so; Paudeen did not get into the recess; he got to within a foot of the recess, within four or five feet of Poole, he moving all the time—a step forward, and a step back again.

Q. Where did Paudeen and Poole stand when Turner threw off his coat and pulled out his pistol?

Witness was explaining and going over the same testimony, when

Mr. Whiting interrupted him, and told him to answer the question.

Mr. Clark said he would tell the witness that he had a right to explain himself.

Mr. Whiting said that Mr. Clark was not the Judge.

Mr. Clark said he was judge enough for that, and he would insist on the witness being allowed to explain his evidence.

The court here took a recess for a quarter of an hour.

On the re-assembling of the court, the cross-examination of McDonough was resumed—The first I saw of Turner's pistol was when he had it in his hand; it was a large Colt's revolver, as large a one as I ever saw; Turner said to Poole, "If that's your game, let you and I have it, stand back;" there was no one between Turner and Poole; when Turner said that, he pointed his pistol at Poole; at the time he pointed his pistol first, it did not go off; he then went up to Paudeen and caught hold of him and swung him round with one hand, and the pistol went off and hit himself in the arm.

Mr. Whiting—Then he did not lay his pistol in his arm and point to Poole? A. No, it went off in his arm as he was turning round; it hit him in the under part of the arm; I caught hold of him and let him down; I tried to get the pistol from him, but he held on to it; it was while letting him down that the bullet passed by me; Paudeen was out of doors at this time; up to this time there were but two shots fired; Baker stood between Turner and Poole; there were two shots before Poole came out of the recess; I did not know he had been wounded in the knee before he came out of the recess; when Poole went back into the recess I did not see his hands up; when I went into the closet Andrews, Harris and Campbell were already there; the shooting affair was all over when Mr. Jeanaway came in; Baker had gone; Jeanaway was there when I came back with the doctor; I did not hear Poole say that they came there to murder him; I heard him say he would bet $500 there was no man there could lick him.

Q. Did you see a pistol in his hands that night?

A. I did not see a pistol in Mr. Poole's hands from the time I went there until I went for the doctor; when I was in the closet I looked out to see as much as I could; while in the closet the parties got out of my sight for a very little time, about half a minute; when I went into the closet Turner was lying on his side on the floor; I did not see a pistol in Baker's hands before I went into the closet; the first time I saw a pistol in Baker's hand that night was as he was going out of the door; I heard shots when I was in the closet; after I came out I saw Cy Shay and Ackersen, with pistols in their hands; I saw Shay fire a pistol at Baker as he was going out of the door.

Q. You saw Baker down and Poole on top of him. Now, could you not be mistaken as to Baker being under? A. No; Baker was under; I heard a shot after Baker got up and went towards the door; Poole did not say anything when Paudeen said to Mr. Dean to put Poole out too; he did not say whether he would go or not; I heard two or three shots in the street; at that time Poole got off the floor, went to the counter and took a carving knife, and went to the green baize door and put his hand on the handle.

Q. Mr. Poole staggered and fell? A. He was in that position (standing at the door) when I went out of the back door to see if my carriage was going away; I found my carriage there, and I went in again by the front door; I was not afraid to go in that way, though I knew Poole was standing at the door with a knife in his hand, because Poole was a friend of mine, and I knew he would not harm me; when I got in Jake Ackerson was crying, with Poole in his arms; he said Bill was killed; Poole's head was hanging on one side.

Q. Was it not Cy Shay who had Poole in his arms? A. No, sir; it was Jake Ackerson; when Corkey Jack showed me the pistol, there were, I think, two or three chambers of it discharged and the caps off; there were, I think, two loaded; we went up to look for Poole's brother-in-law, and were a long time hunting for the house; Corkey Jack was at one side of the street and I was at the other, knocking at every house; Corkey Jack did not tell me whose pistol it was—he said he picked it up; I was a friend of Poole's; I knew Mr. Baker before this; I have seen him since in the Tombs; there was nothing said between us as to who was under; nothing said as to Baker being under Poole at the time; nothing at all took place between us—I only saw Baker; there was a great deal of smoke near where the persons were firing.

Q. When you say Baker was under Poole, had Baker a hold of Poole? A. I did not see; Baker shoved him off, and they both got up.

Q. Who got up first? A. Mr. Baker; I do not know who shot Lozier; I do not know whether Lozier had been shot in the head before he went towards Baker; Poole came out of the recess as Lozier was going towards where Baker stood; I did not see Poole stagger that way; I cannot say what position Turner was in when he discharged his pistol the second time; Poole had started forward from the recess before Turner discharged his second pistol; when on the floor Baker was a little on his back and Poole over him; Poole was not on one knee; I did not see either of them in that position; I did not see either of them take hold of the other by the neck; I could not see with sufficient clearness to see whether Poole's body was flat on Baker.

Mr. Clark—I want you to explain how Baker got up first when Poole was over him? A. Baker shoved Mr. Poole off of him over against the wall, and then got up; I heard Turner say to Poole, "Never mind him, Bill, Paudeen is drunk;" Turner was not drunk; Baker was sober; Paudeen was drunk; when I saw Baker in the Tombs I might have spoken about this; I don't recollect; I don't recollect saying to him that I did not expect to see him there.

Question by Mr. Clark—Did you not call on me and tell me that your testimony ought to be made public?

Mr. Whiting objected.

To Mr. Clark—It was before Paudeen spit in Mr. Poole's face that Mr. Dean went towards the door; whether he (Mr. Dean) went out or not I can't say.

Mark Maguire, examined by Mr. Brady—I am a newspaper carrier; I have got other persons in my employ who carry for me; I am engaged in that business since 1831; I knew Poole about thirty years; I was on intimate terms with him up to the time of the difficulty in Stanwix Hall; I had a brother who was also intimate with Poole. Q. State what occurred in Stanwix Hall? A. I was at Florence's first, and heard there was a difficulty between Poole and Morrissey; I went to Stanwix Hall; I saw Mr. Poole there and asked him how he was; he said, very well since he had been out South; I went into the inside room, and saw Morrissey there drinking wine; a man came in after and pulled Morrissey about; he did not seem pleased; they went out into the bar room; there he saw Poole, and he (Morrissey) said to him, "You black muzzled murderer, are you here?" other words ensued, Poole desired Morrissey to draw, and Morrissey said he had no pistol; Poole drew his pistol, and pointed it at Morrissey; I got between them, and asked Poole whether he was going to murder the man in cold blood, and told him that Morrissey had no pistol; Poole jumped on the wash hand stand and then on the counter, and presented his pistol at Morrissey; Morrissey asked for a pistol; I did not see any person give him one; the next I saw he had a pistol; he was pointing it every way; he was drunk. Q. Was there any thing said before this about Irishmen? A. Poole spoke about Irishmen; he said no Irishman was as good as an American; I told him an Irishman was as good as he, that all men were born free, and that this was a land of equality, and an Irishman was as good as an American; that the country was made for all; he said no Irishman was as good as he; I said I was an Irishman born, and came to this country when I was a year old, and that I was as good as he was; he asked me to fight him with carving knives; I said I would fight him my own way; I declined to fight him with knives, because, I said, he was a heavier man than me; some other words passed, and I said I was sorry for what had occurred between us, because of the way he had treated my brother; we shook hands afterwards, and took a drink (laughter); officers came in soon after that, and took him and Morrissey away; Mr. Irving and Mr. Janeway were trying to make peace; I should think Poole's pistol was a revolver; it was a new one; after the disturbance was over I went to Charley Abel's and took a drink there; I then went to Lafayette Hall, and then to Stanwix Hall again; Mr. Truesdell was with me; the house was full; that was the last time I saw Poole alive; I know Mr. Van Pelt; I know him to be friendly towards Poole; I know Hyler; he was friendly to Poole; Poole's pistol was close to Morrisey when I rushed between them and told him not to murder the man in cold blood, that Morrisey had no pistol; the man who came into the room and pulled Morrissey about was Mr. Botheil; he was a friend of Poole's; I have seen him at Poole's house; I used to visit at Poole's; I saw Baker there at the time of the first difficulty; I saw him do nothing but take a drink; I heard him abused there as they were always abusing him; I heard Mr. Post, a friend of Poole, call Baker a loafer; Baker said he was no loafer; I have known Baker a good many years; I have always known him to be a peaceable man in barrooms, and a harmless man as far as fighting goes; as long as Poole and Morrissey were together Poole never stopped his abuse.

Q. Did you ever try to make peace between Poole and Baker? A. I was a friend of Poole's; and Mr. Lanergan asked me to make friends between him and Baker; I endeavored to make friends between Poole and Baker on more than one occasion.

Cross-examined by Mr. Whiting.—I was very friendly with Mr. Baker; I made acquaintance with him about eight years ago; was not more friendly with him than with Poole; never had a word with Poole before that night, and then I made up with him.

Q. You apologized to him? A. I did not apologize to him; I made up with him; I said I was sorry there were any words between us, on account of the way he treated my brother; the first thing I did when I went in was to speak to Poole; I asked him how he was; I then went into the back room.

Q. Who was there? A. Hyler, Wallace, Sam Suydam and Morrisey; that's all I remember; officer Hogan, I think, was sitting some distance from them; when Morrissey and Bartholf came out he (Morrissey) said to Poole, "is it there you are you black muzzled murderer;" Poole had not spoken to him at that time; I am a friend of Morrissey's; I am a friend of Van Pelt's and of Hyler's.

Q. You are a friend of Paudeen's also? A. Yes; and there is no disgrace in it.

Mr. Whiting—I did not say there was. A. You made a kind of emphasis in it; I am a friend of Linn and Hyler; when Poole asked me to fight there was only one knife showed, and I was'nt going to fight him that way (laughter); he had a pistol too.

Q. What did you mean by saying you would fight him your own way? A. I told him I would fight him with pistols, as he was a bigger man than me; I do not know who the boy was that brought Morrissey the pistol; I was in an altercation with Poole at the time; I did not see any boy give him a pistol; I always saw Baker very peaceable; I heard he had a fight with Poole at the Gem.

Q. After that were they not unfriendly? A. Baker always said Poole was a good friend to him, and that he was a good friend to Poole.

To Mr. Brady—I think I heard Morrissey ask some one, did he come there again to kick him in the head? I think it was to James Post he said it.

To. Mr. Whiting—Heard Morrissey ask the whole crowd if they came there to "heel for Poole again;" I am sure he said heel again but whether he said about kicking in the head, or something like it, I can't say; I went back to Stanwix Hall again at 11 o'clock, and took a drink; I take a drink in every public house I go to when I feel like it; Poole was always speaking some hing about the Irish, and said that he had come from where the "raddishes grew." I don't think Poole was as drunk as Morrissey Morrissey was staggering all over the room; some men get drunk in the head and others get drunk in the heels. (Laughter.) Poole was drunk in the head, and Morrissey was drunk in both head and heels. (Continued laughter.)

William Goodheart examined for defence—I am a butcher in Washington market; I knew Poole since we were small boys together; I knew Morrissey some two or three years before the death of Poole; I have known Baker since he was a small boy; I was at Stanwix Hall at the time of the first difficulty; I think a man named Bawm was with me when I went to Stanwix Hall; we went from the stables in Mercer street; we met a man who told us there would be likely to be a difficulty in Stanwix Hall, and we went there; when I went in I saw Poole; Morrissey came out from the back room; Morrissey said, "How are you, you black muzzled son of a b——h?" with that Poole went up to Morrissey with a pistol; Irving tried to make peace, and did all he could to part them; Morrissey asked Hyler for a pistol, and Hyler said he did not wish to get him one; Morrissey got a pistol after that and pointed it at Poole; I saw Poole get on the washstand and on the counter, and present his pistol again at Morrissey; I saw Baker there; he was sitting on a chair; I went to Morrissey and tried to get him away; I told him Mr. Poole had a pistol.

Q. Were you on good terms with Poole at that time? A. On middling terms; I heard part of what Poole said to Mark Maguire; after the officers had them in custody, Mr. Irving and I went away; I walked home with Mr. Irving; he lives below Second avenue in Twenty-first street; I saw Poole next morning at Stanwix Hall; I met Mr. Irving at Florence's, and he and I went to see Poole.

Cross-examined.—Mr. Poole's house is, I should judge a mile and a half from Stanwix Hall; after I left him I went home; I lived in Jane street; on Sunday morning I walked round to Jefferson Market prison; I generally walk there on a Sunday morning; I did not hear of the affair in Stanwix Hall when I went to the prison; I went to Florence's and saw Irving there.

It being now near 5 o'clock, the court adjourned to 11 o'clock Wednesday morning.

Board of Ten Governors.

TROUBLE BETWEEN THE COMPTROLLER AND TEN GOVERNORS.

Board met at 4 P. M. Present, Governors Townsend (in the chair), Draper, Smith, Herrick, Duke, Dugee, Tiemann, West, Henry and Taylor.

RESIGNATION OF A GOVERNOR.

Edward C. West, one of the Governors, tendered his resignation, to take effect on the 9th of January next. Much regret was expressed by the Governors, but at Mr. West's request the declination was accepted unanimously. There will therefore be two vacancies in the Board next January, viz:—One in place of Joseph S. Taylor, recently elected Street Commissioner, and one in place of Ed. C. West, resigned. The remaining Governors are competent to fill vacancies in the Board. Who those two new Governors will be the politicians will soon find out. Mr. West is a hard shell democrat, and was elected in 1851. Mr. Taylor is an American, and took his seat a year ago.

MECHANICS' WAGES.

A communication was received from the stone cutters on Blackwell's Island, asking for more wages. They complain that they receive but $1 75, when other employers give $2 per day. Beside's they are compelled to pay 20 cents per day for stage hire. Referred to committee, with instructions to give current wages.

COMMITMENTS TO CITY PRISON FOR DRUNKENNESS.

Gov. DUKE, from the City Prison Committee, made a report with reference to commitments to Jefferson Market for intoxication. It appears of sixty persons lately committed, forty-five were temporarily committed and fifteen fully committed to the Tombs. It was proved that those who were temporarily committed often remained in prison fourteen days, whereas the full term was ten days. This abuse had become so glaring that the committee asked the opinion of the District Attorney, who answered that any person taken up for drunkenness should either be fined or committed within twenty-four hours, and it was the duty of the Judge to attend to their case immediately. It appears on a temporary commitment the fine is paid at the Police Court, and when fully committed, it is paid to the Alms House Department.

COMPTROLLER FLAGG AND THE GOVERNORS.

Governor DUKE offered a resolution allowing the Supply Clerk only to buy goods for the departments. It appears that sometimes the Governors themselves buy goods, and this practice is sought to be stopped.

Governor DRAPER favored the resolution, though he did not thereby wish to convey the impression that any of the Governors would act incorrectly. The board had been in existence now seven years, and had spent millions of money legitimately, and Mr. Draper denied that during that time any one could find any flaw in their proceedings. He was prepared with documents to prove this position. He referred to Flagg's late report, in which it was charged that the annual increase of taxation was over $400,000, whereas in fact it was only $201,000. He read the following facts as showing the real expenditures:

1854.	
Appropriation for Almshouse	$427,150
Additional appropriation	125,000
Total	$552,150
Buildings and repairs	95,000
Total	$647,150
Expended	$603,765
1855.	
Appropriation for Almshouse	$542,450
Additional appropriation	107,000
Total	$649,450
Buildings and repairs	71,000
Total	$720,450
Expended Jan. 1 to Nov. 3, 1855	$760,000
1856.	
Appropriation for Almshouse, called for	$652,000
Buildings and repairs	165,600
Total	$817,600
Alleged indebtedness of Commrs. of Emigration	$53,000

Governor DRAPER charged Flagg with culpable ignorance or falsehood in making the statement he had. He also commented severely on the *Journal of Commerce*, who, he alleged, urged that more clerks should be put on the Alms House Department. He believed that an attack was about to be made on the organization of the Alms House and he deprecated it at once. He (the governor) did not fear the attacks of a miserable scribbler, or that of an overgrown, bloated reformer like Flagg.

Governor WEST thought that if Governor Duke's resolution prevailed the members might as well stay at home.

After some further discussion, the subject was laid on the table until next week.

PENITENTIARY HOSPITAL.

The report for November, of the admissions and discharges at the Penitentiary Hospital, was received from Dr. W. W. Sanger, the resident physician, showing that 425 patients—232 males and 293 females—have been under medical treatment during the month, and 310 patients are remaining in it now, 142 of whom are from the Penitentiary, 146 from the Workhouse and 22 from the Almshouse. 131 patients were admitted during November—namely, 46 males and 85 females. Of these 79 were under twenty five years of age; 38 were natives of the United States, from New York, New Jersey, Connecticut, Maryland, Ohio, North Carolina, Massachusetts, Pennsylvania and Rhode Island; 93 were foreigners, Ireland, as usual, contributing the largest number—that is, 63, England sends 10, Germany 8, Scotland 4, Canada 3, Prussia 2, Poland and Wales 1 each. Of the foreigners, 20 have been less than five years in the United States, and will, we suppose, form another item in the disputed bill against the Commissioners of Emigration. The next table in the report shows how many times each patient has been admitted to the Penitentiary Hospital. One poor, miserable woman has been there 18 times, and another 26 times. Under the head of education we see that 20 can read and write well, 74 only imperfectly, while 35 are uneducated. 91 are single, 20 married and 19 widowed. Ten are temperate in their habits, 47 are moderate drinkers, 63 are intemperate and 16 are habitual drunkards. The ages of the patients are placed in conjunction with their habits; thus, of the 17 drunkards, 5 are under 20 years of age, 3 under 25, 2 under 30, 1 under 40, 4 under 50 and 2 upwards of 50. The profession of religion is 24 Protestants, 80 Roman Catholics, 1 Jew and 25 who do not profess any creed. The table of occupations shows also the time which has elapsed since each patient worked at a trade; and of the number admitted, it seems that 35 had worked up to the time they were received as patients, 30 had