MUNICIPAL AFFAIRS.

[Th]e Proposed Charter for the City of New York.

AN ACT

[TO] AMEND THE CHARTER OF THE CITY OF NEW YORK.

[S]ec. 1. The Corporation, or body corporate, now exist[ing] and known by the name of "The Mayor, Aldermen [and] Commonalty of the City of New York," shall remain [and] continue to be a body politic and corporate, in fact [and] in name, by the name of "The Mayor, Aldermen and [Co]mmonalty of the City of New York," and by that name [sha]ll have perpetual succession, and be able to sue and be [sue]d, to plead and be impleaded, to answer and to be an[swe]red, to defend and to be defended, in all courts and [pla]ces, in all manner of actions, suits, complaints, pleas, [cau]ses, matters and demands whatever, and of what na[ture] and kind whatever, in as full and ample manner and [for]m as any citizen; and shall be capable to take, pur[cha]se, hold, receive and enjoy, and to sell, demise, mort[gag]e, assign, dispose of, and convey in fee, for life or [year]s, or for years, or in any other manner, any property, [rea]l or personal, of what nature, kind or quality [wh]atsoever; and may and shall have and use a common [sea]l, and may alter or change the same at their pleasure; [an]d shall have, and continue to exercise and enjoy, all [the] rights, immunities, powers, privileges and fran[chi]ses heretofore and hitherto belonging to it; and shall [hav]e power to make all needful laws, ordinances and [reg]ulations for the municipal government of said city; [and] the Board of Aldermen, when acting as supervisors [of] the county, shall have power to lay, assess and col[lect] all taxes necessary for the payment of the expenses [of] the city government.

[S]ec. 2. The legislative power of the Corporation of the [cit]y of New York shall be vested in a Board of Aldermen [an]d a Board of Assistant Aldermen, who, together shall [for]m the Common Council of the city. The Board of [Al]dermen shall consist of one alderman from each ward [as] now constituted, who shall be elected by the people of [the] respective wards for two years. The Aldermen and [Cou]ncilmen now in office shall continue to discharge the [dut]ies of their said offices until the expiration of the [per]iod for which they were elected. The wards having [an] odd numerical designation shall elect aldermen at the [gen]eral election in 1856, and every two years thereafter. [Th]e wards having an even numerical designation shall [ele]ct their aldermen at the general election in 1857 in [like] manner.

[S]ec. 3. The Board of Assistant Aldermen shall consist [of] one Assistant Alderman from each ward, who shall [be] elected in like manner, and shall hold office for one [yea]r.

[S]ec. 4. The Mayor shall hold his office for two years, [an]d the first election for Mayor, under this act, shall be [hel]d at the general election in 1856.

[S]ec. 5. The election for charter officers shall be held [on] the day of the general State election, when all charter [offi]cers to be elected by the people shall be chosen, and [the] officers who shall be elected shall be sworn into of[fice] on the first Monday of January thereafter; and the [law]s of the State regulating elections shall apply to [ele]ctions of charter officers; but the Common Council [ma]y, by law, extend the time for the canvass of the [vot]es.

[S]ec. 6. The Board of Aldermen shall have power to di[rec]t a special election to be held to supply the place of [an]y Alderman whose seat shall become vacant by death, [rem]oval from the city, resignation or otherwise; and the [Boa]rd of Assistants shall also have power to direct a spe[cia]l election to supply any vacancy that may occur in the [Boa]rd of Assistants; and in both cases, the person elect[ed] to supply the vacancy, shall hold his seat only for the [res]idue of the term of office of his immediate predecessor. [Pro]vided, however that such special election shall not [be] ordered unless at least two months of the term in which [suc]h vacancy occurs shall remain unexpired.

[S]ec. 7. The two Boards shall meet in separate cham[ber]s, and a majority of each shall be a quorum to do busi[nes]s. Each Board shall appoint a President from its own [bod]y, and shall also choose its clerk and other officers, de[ter]mine the rules of its own proceedings, and be the judge [of] the election returns, and qualifications of its own mem[ber]s. Each Board shall keep a journal of its own pro[cee]dings, and the doors of each shall be kept open, except [wh]en the public welfare shall require secrecy; and all [res]olutions and reports of committees which shall re[com]mend any specific improvement involving the appro[pria]tion of public moneys, or taxing or assessing the citi[zen]s of said city, shall be published immediately after the [adj]ournment of the Board, under the authority of the [Com]mon Council, in all the newspapers employed by the [Cor]poration; and whenever a vote is taken in relation [the]reto, the ayes and noes shall be called and published [in] the same manner.

[S]ec. 8. Each Board shall have the authority to compel [the] attendance of absent members; to punish its members [for] disorderly behavior, and to expel a member, with the [con]currence of two-thirds of the members elected to the [Boa]rd; and the member so expelled shall, by such ex[pul]sion, forfeit all his rights and powers as an Alderman [or] Assistant Alderman.

[S]ec. 9. The stated and occasional meetings of each [Boa]rd of the Common Council shall be regulated by its [own] ordinances; and both Boards may meet on the same [or] on different days, as they may severally judge expe[die]nt.

[S]ec. 10. Any law, ordinance or resolution of the Com[mo]n Council may originate in either Board, and when it [sha]ll have passed one Board, may be rejected or amended [by] the other. But no law, ordinance or resolution re[qui]ring the concurrence of both Boards shall pass either [Boa]rd, except by the vote of a majority of the members [ele]cted.

[S]ec. 11. Neither the Mayor or the Recorder of the city [of] New York, shall be a member of the Common Council.

[S]ec. 12. It shall be the duty of the Mayor, on the first [Mo]nday in January, 1857, and thereafter, immediately [afte]r being sworn into office, to nominate to the Board of [Ald]ermen an Executive Council, consisting of a Comp[tro]ller, a Corporation Counsel, a Chief of Police, an En[gineer] of the Croton Aqueduct, a Street Commissioner, a [City] Inspector, and a Commissioner of Repairs and Sup[plies], to assist him in supervising the executive duties of [the] city, which duties shall be clearly defined by ordinance [of t]he Common Council. The Mayor shall, in like man[ner], fill any vacancy that may occur in any of the offices [enu]merated in this section. If any nomination, made in [acc]ordance with the provisions of this act, shall be rejected [by] the Board of Aldermen, the Mayor must, within ten [days] thereafter, nominate other and different persons. [No] appointment shall be valid unless confirmed by the [Boa]rd of Aldermen, nor shall it be lawful for any person [nom]inated to either of the above offices to enter upon the [dis]charge of its duties until confirmed according to law. [Pro]vided, however, that the Mayor shall not be author[ized] by this act to make any nomination for the office of [Com]ptroller, Corporation Counsel, Street Commissioner, [City] Inspector, or Commissioner of Repairs and Sup[plies], until the expiration of the period for which the [pres]ent incumbents were elected.

[It] shall also be the duty of the Mayor—

[T]o communicate to the Common Council, at least [on]ce a year, on the first Monday in January and July, [or] oftener, if he shall deem it expedient, a general [sta]tement of the situation and condition of the city, in [rela]tion to its government, finances and improvements.

[T]o recommend to the adoption of the Common Council [all] such measures connected with the police, security, [hea]lth, cleanliness and ornament of the city, and the im[prove]ment of its government and finances as he shall [dee]m expedient.

[T]o be vigilant and active in causing the laws and ordi[nan]ces of the government of the city to be duly executed [and] enforced.

[T]o exercise a constant supervision and control over the [con]duct and acts of all subordinate officers, and to receive [and] examine into all such complaints as may be preferred [aga]inst any of them for violation or neglect of duty, and [gen]erally to perform all such duties as may be prescribed [for h]im by the charter and city ordinances, and the laws [of t]his State and the United States.

[Se]c. 13. Whenever there shall be a vacancy in the [offic]e of Mayor, and whenever the Mayor shall be absent [fro]m the city, or be prevented by sickness, or any other [caus]e, from attending to the duties of his office, the [Pres]ident of the Board of Aldermen shall act as Mayor, [and] shall possess all the rights and powers of the Mayor, [dur]ing the continuance of such vacancy, absence or dis[abil]ity.

[Se]c. 14. Annual and occasional appropriations shall be [mad]e, by proper ordinances of the Common Council, for [ever]y branch and object of city expenditure, nor shall [any] money be drawn from the city treasury except the [sam]e shall have been previously appropriated to the pur[pose] for which it was drawn.

[Se]c. 15. The Common Council shall not have authority [to b]orrow any sums of money whatever, on the credit of [the] Corporation, except in anticipation of the revenue of [the] year in which such loan shall be made, unless autho[rize]d by a special act of the Legislature, on application [of t]he Mayor, Aldermen and commonalty of the city of [New] York.

[Se]c. 16. It shall be the duty of the Common Council to [pub]lish, two months before the annual election of charter [offic]ers, in each year, for the general information of the [citiz]ens of New York, a full and detailed statement of the [rece]ipts and expenditures of the Corporation during the [year] ending on the first day of the month in which such [publ]ication is made; and in every such statement the dif[fere]nt sources of city revenue, and the amount received [from] each; the several appropriations made by the Com[mon] Council, the objects for which the same were made, [and] the amount of moneys expended under each; the mo[neys] borrowed on the credit of the Corporation, the autho[rity] under which each loan was made, and the terms on [whic]h the same was obtained, shall be clearly and par[ticul]arly specified.

[Se]c. 17. The Common Council shall have power to [crea]te such departments and offices by ordinance, in ad[ditio]n to those herein specified, as may be necessary to [trans]act the public business of the Corporation, and to [defin]e their duties, and to fix the salaries of all officers [paid] from the city treasury. All salaries of officers shall [be fi]xed before the appointment is made, and all officers [of t]he city government shall be appointed by the [Com]mon Council, with the exception of the Mayor, [Alde]rmen, Assistant Aldermen, and the members [of] the Executive Council, to be nominated by [the] Mayor. All officers of the city government, [exec]utive, administrative or judicial, and all judges [and] clerks in the several courts of the city, shall receive [a fix]ed salary, or a per diem allowance for their services, [whic]h shall be fixed by the Common Council, and [shal]l not, after the first day of January, 1857, receive, to [thei]r own use, any fee or compensation for the same; [but] all fees or charges paid to them according to law, for [the] performance of any duties appertaining to their [offic]es, shall be paid by them monthly, into the city trea[sury].

[Se]c. 18. It shall be the duty of the Common Council to [prov]ide for the accountability of all officers and other [pers]ons to whom the receipt or expenditure of the funds [of t]he city shall be intrusted, by requiring from them [suff]icient security for the performance of their duties or [trus]t.

[Se]c. 19. The clerk of the Board of Aldermen shall, by [virtu]e of his office, be Clerk of the Common Council, and [shal]l perform all the duties heretofore performed by the [Cler]k of the Common Council, except such as shall be as[sign]ed to the Clerk of the Board of Assistant Aldermen; [and] it shall be his duty to keep open for inspection, at all [reas]onable times, the records and minutes of the pro[ceed]ings of the Common Council, except such as shall be [spec]ially ordered otherwise.

[Se]c. 20. It shall be the duty of the clerks of the [resp]ective Boards to publish all ordinances and amend[men]ts of ordinances which shall be passed, and also the [proc]eedings, in the newspapers employed by the Corpora[tion], except such parts as may require secrecy, and when[ever] a vote shall be taken in either Board, upon the pas[sage] of a resolution or ordinance which shall contemplate [any] specific improvement, or involve the sale, disposition or appropriation of public property, or the expenditure of public moneys, or income therefrom, or lay any tax or assessment, such resolution or ordinance shall, before the same shall be sent to the other Board, and immediately after the adjournment of the Board at which the same shall have been passed, be published, with the ayes and noes, with the names of the persons voting for and against the same, in the newspapers employed by the Corporation, as part of the proceedings; and no act, resolution or ordinance which shall have passed one Board shall be acted upon by the other Board on the same day, unless by unanimous consent, except in case of invasion, insurrection or pestilence.

Sec. 21. The Board of Assistant Aldermen shall have the sole power of impeachment of all city officers, not otherwise provided for; and pending such impeachment and until the final disposition thereof, the party impeached shall not exercise any of the functions of his office. The Board of Aldermen shall have the sole power to try all impeachments; when sitting for that purpose they shall be on oath or affirmation truly and impartially to try the impeachment according to evidence, and no person shall be convicted without the concurrence of two thirds of all the members elected to said Board. Judgment in case of impeachment shall not extend further than removal from office, and disqualification to hold any office under the city charter, but the party convicted shall be liable to indictment, trial, judgment and punishment, according to law.

Sec. 22. Any officer of the city government, except the Mayor and members of the Common Council, may be removed from office by concurrent resolution of both Boards of the Common Council. Any member of the Executive Council may be removed by the Mayor.

Sec. 23. The several executive departments, and the officers and clerks thereof, shall be subject to the legislative regulation and direction of the Common Council, so far as the same shall not be inconsistent with this act, and the duties thereof shall be performed in accordance with the charter and laws and ordinances of the city. The Mayor or either Board of the Common Council may, at any time, require the opinion in writing of the head of any department upon any subject relating to his department, or any information possessed by him in relation thereto. And every head of department shall report, in writing, to the Common Council, on the first Monday of September in each year, the state of his department, with such suggestions in relation to the improvement thereof, and to the public business connected therewith, as he may deem advisable.

Sec. 24. All work to be done, and all supplies to be furnished for the Corporation, involving an expenditure of more than two hundred and fifty dollars, shall be by contract, under such regulations as shall be established by ordinance of the Common Council, unless by a vote of three-fourths of the members elected to each board of the Common Council it shall be otherwise ordered; and all contracts shall be founded on sealed bids or proposals, made in compliance with public notice, advertised for the full period of ten days in such of the public newspapers of the city as may be employed by the Corporation for the purpose; and all such contracts, when given, shall be given to the lowest bidder, who gives such security as shall be prescribed by ordinance. All such bids or proposals shall be opened by the officer advertising for them, in the presence of such of the parties making them as may desire to be present, or the Common Council by ordinance designate.

Sec. 25. Every person elected or appointed to any office under the city government, shall take and subscribe an oath or affirmation before the Mayor, faithfully to perform the duties of his office, which oath or affirmation shall be filed in the Mayor's office.

Sec. 26. All officers of the city government, elected by the people, who shall be in office when this act goes into effect, shall hold their offices and execute the duties thereof for the full period for which they were elected.

Sec. 27. No member of either board shall, during the period for which he was elected, be appointed to, or be competent to hold any office of which the emoluments are paid from the city Treasury, or by fees directed to be paid by any ordinance or act of the Common Council, or be directly or indirectly interested in any contract, the expenses or consideration whereof are to be paid under any ordinance of the Common Council; but this section shall not be construed to deprive any alderman or assistant of any emoluments or fees which he is entitled to by virtue of his office.

Sec. 28. Any officer of the city government, or person employed in its service, who shall wilfully violate any of the provisions of this charter, or commit any fraud, or convert any of the public property to his own use, or knowingly permit any other person so to convert it, shall be deemed guilty of a misdemeanor, and in addition to the penalties imposed by law, shall forfeit his office, and be excluded forever after from receiving or holding any office under the city charter. And any person who shall wilfully swear falsely in any oath or affirmation required by this act, shall be guilty of perjury.

Sec. 29. Every act, ordinance or resolution, which shall have passed the two Boards of the Common Council, before it shall take effect, shall be presented, duly certified, to the Mayor of the city, for his approbation, except such acts and resolutions in relation to appointments to office as provided for in section 17 of this act. If he approve, he shall sign it; if not, he shall return it, with his objections, to the Board in which it originated, within ten days thereafter; or if such Board be not then in session, at its next meeting. The board to which it shall be returned, shall enter the objections at large on their journal, and cause the same to be published in one or more of the public newspapers of the city. The board to which such act, ordinance or resolution shall have been so returned, shall, after the expiration of not less than ten days thereafter, proceed to reconsider the same. If, after such reconsideration, two-thirds of the members elected to the board, shall agree to pass the same, it shall be sent, together with the objections of the Mayor, to the other board, by which it shall be likewise reconsidered, and if approved by two-thirds of all the members elected to such board it shall take effect as an act or law of the Corporation. In all such cases the votes of both boards shall be determined by yeas and nays, and the names of the persons voting for and against the passage of the measure reconsidered, shall be entered on the journal of each Board respectively. If any ordinance, or resolution, passed by both Boards shall not be returned by the Mayor within ten days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if he had signed it, unless the close of the session of the Board in which it originated shall prevent its return, in which case it shall not be a law until the expiration of the next meeting of said Board. Any act or resolution returned by the Mayor at such meeting shall be reconsidered, and disposed of, in the same manner and with like effect as if presented at the preceding session.

Sec. 30. All ferries, docks, piers and slips shall be leased; and all leases and sales of public property and franchises, (other than grants of land under water, to which the owners of the upland shall have a pre-emption right,) shall be made by public auction, and to the highest bidder who will give adequate security. (No lease hereafter given except as the same may be required by covenants of the Corporation already existing, shall be for a longer period than ten years, and all ferry leases shall be revocable, by the Common Council, for mismanagement, or neglect to provide adequate accommodations.) All persons requiring any ferry lease or other franchise, or grant, under the provisions of this act, shall be required to purchase, at a fair appraised valuation, the boats, building, or other property of the former lessees or grantees actually necessary for the purposes of such ferry, grant or franchise. Previous notice of all sales referred to in this section, shall be given, under the direction of the Comptroller, for thirty days, in the public newspapers and those employed by the Corporation.

Sec. 31. No bids shall be accepted from, or contract awarded to any person who is in arrears to the Corporation, upon debt or contract, or who is defaulter, as security or otherwise, upon any obligation to the Corporation.

Sec. 32. No money shall be expended by the Corporation for any celebration, procession or entertainment of any kind, or on any occasion, except for the celebration of the anniversary of the National Independence, the twenty-fifth of November, "Evacuation Day," and the anniversary of the birthday of Washington, unless by the vote of two-thirds of all the members elected to each Board of the Common Council.

Sec. 33. No additional allowance, beyond the legal claim, under any contract with the Corporation, or for any service on its account, or in its employment, shall ever be allowed.

Sec. 34. Chapter 122, of laws of 1830, and an act to amend the charter of the city of New York, passed April 2, 1849, and an act to amend an act entitled an act to amend the charter of the city of New York, passed April 2, 1849, passed July 11, 1851; and an act further to amend the charter of the city of New York, passed April 12, 1853; and an act supplementary to an act entitled an act further to amend the charter of the city of New York, passed April 12, 1853, passed June 14, 1853, are hereby repealed; and such parts of the charter of the city of New York as are not inconsistent with the provisions of this act, shall not be construed as repealed, modified or in any manner affected thereby, but shall continue and remain in full force; and all laws inconsistent with this act are also hereby repealed.

Sec. 35. This act shall go into effect on the first day of July, 1856.

First District Court.

Before Hon. Judge Green.

SUIT FOR THEATRICAL SERVICES—IMPORTANT TO THE DRAMATIC PROFESSION.

FEB. 5.—*George Jordan against William E. Burton.*—This was an action to recover judgment for the sum of fifty seven dollars, for six days' services of plaintiff and wife, alleged to have been rendered to defendant as actors in Burton's theatre. The defendant in his answer denied owing the sum demanded. On the trial it appeared that the plaintiff had effected an engagement with the defendant for the current season, for himself and wife, at the weekly salary of $57, as members of defendant's stock company; that a season consisted of either forty or forty-two weeks—usually commencing in September and ending in the following June. This season commenced on Monday, the 3d day of September last, and the plaintiff had been paid his regular weekly salary from that time down to the Saturday preceding the Wednesday that he left the defendant's employment, thus leaving three days unpaid for—it being the custom of the defendant to retain three days' salary until the end of the season, as security for the performance of the engagement. One witness testified that plaintiff admitted to him that he was engaged for the season. It also appeared that the plaintiff wrote a note to the defendant to the effect that he should not perform for him after Wednesday evening, the 19th of December last, without assigning any reason therefor, and that that was the last night he would perform at defendant's theatre. He and his wife have been playing since that period at Laura Keene's Varieties. Mr. Cram, for the defendant, stated that Mr. Burton would not have defended this action for such a trifling sum, had it not been for the manner in which Mr. Jordan had broken his engagement, and that without any apparent cause. That he had been paid his salary regularly, and that there was nothing due him in this case, as he had not served out his week, and that he had broken his contract with Mr. Burton.

The Judge sustained the objection of the defendant's counsel and gave judgment for him, with costs, and in deciding, said that he was clearly of opinion, from the facts testified to by the witnesses, that the plaintiff had agreed with defendant that he and his wife would perform for the current season at $57 a week, payable weekly, and that the season consisted of at least forty weeks. His leaving before the end of the season is such a breach of his agreement as to entitle the defendant in an action to recover such damages as he has sustained thereby; besides, the plaintiff and his wife performed but three days of the week the salary for which he seeks to recover—they must perform the whole week in order to entitle the plaintiff to recover.

THE CENTRAL PARK.

Confirmation of the Commissioner's Report in Favor of the Project.

SUPREME COURT—SPECIAL TERM.

In the Matter of the Application of the Mayor, &c., of the city of New York, relative to the opening and laying out of a public place between 59th and 106th streets and the Fifth and Eighth avenues, in the city of New York.—BY THE COURT, HARRIS, J.—Every citizen holds his property subject to the wants of the government. This is an invariable condition of society. If money is required, it is taken by taxation—if property, by the right of eminent domain. Such power is a necessary incident of sovereignty. Its exercise, especially in a country like ours, whose growth and expansion is a constant surprise even to ourselves, is often indispensable.

The public interests could not be sufficiently advanced without it. Individuals are not to be permitted to interpose their will or caprice, or even their own self interest, to thwart useful improvement or prevent the development of great public advantages.

Whether or not the public exigency requires that money shall be raised by a tax, or property shall be taken for public use, is a question referred to the sovereign will of the State, as expressed by legislative authority. It is enough that the public good demands it. Of this question the Legislature are the exclusive judges. It is no more the province of the judicial power to determine whether private property is required for public use than it is to inquire whether the public exigency requires that money should be raised by a tax.

Nor can I concur in the position maintained upon the argument of this case that this power can only be rightfully exercised in cases of absolute necessity. A strict application of such a principle would completely annihilate the power. It would not be easy to state a case in which it would be absolutely necessary to take private property for public use. But the term, when applied to this subject, has no such restricted meaning. If, in the judgment of the Legislature, the public convenience requires that the property of individuals should be taken from them and devoted to the public use, this constitutes a sufficient legal necessity to authorize the exercise of this power.

The mode in which this power is to be exercised is sufficiently guarded to protect the citizen against injustice. He is protected in the enjoyment of his property, unless the public needs it. For this protection he pays an equivalent in taxes. If the public need his property he must surrender it; but then only upon being paid a fair equivalent in money. By his taxes he pays no more than his just share for the benefits of government. When he gives up his property, he contributes so much more, and is entitled to adequate compensation. He sells his property to the public, involuntarily, it is true, but for a price fixed by fair appraisal.

It is in this way that, from the very beginning of our government, property has been obtained for public improvements, such as turnpike roads, canals, railroads and other kindred objects. In many cases the application has had its origin in private enterprise, and for private gain; but it has always been deemed enough to justify the exercise of the power, that the enterprise would result in public utility.

By an act of the Legislature relating to this subject, passed in July, 1853, it was declared that the tract of land mentioned in the title of this proceeding should be "a public place," in the same manner as if the same had been laid out by the commissioners appointed in 1807 for the purpose of laying out streets, &c., in the city of New York, and the Corporation of New York were authorized to take the land for public use, as and for a public square. The act provided for the appointment of five commissioners of estimate and assessment, and made the existing laws relative to the laying out and taking public squares and places in the city of New York applicable to the proceeding.

Of the wisdom or expediency of the measure it is not my province on this occasion to speak. It is enough that the Legislature have declared that it was required by the public interest and for the public convenience. But I may perhaps allow myself here to say, that if the apprehensions of the most distrustful should be realized, the enterprise cannot prove very disastrous, or even unprofitable. The most incredulous will not doubt, that should the generation who, half a century hence, will possess this American metropolis—then, perhaps, the metropolis of the world—think it expedient to withdraw this tract of land from the uses to which it is now to be devoted, it might then be made to produce a revenue exceeding by many times the amount of the present expenditure.

Commissioners were appointed pursuant to the act, in November, 1853. Of the eminent fitness of this commission, and the fidelity with which it has discharged its important trusts, all the parties who have appeared upon this hearing have borne their unqualified and emphatic testimony. Nearly two years were occupied by the commissioners in preparing their appraisal and assessments. On the fourth of October last, the result was submitted to the public, and opportunity was given to present objections. Parties dissatisfied with the decisions of the commissioners were heard before them, and, so far as objections were presented, the decisions of the commissioners were reviewed, and, upon such review, such corrections made as were deemed just by the commissioners.

The result is now presented to this court in the report of the commissioners. The only question now to be determined is, whether the report shall be confirmed, or whether it contains such errors as require that it should be referred back to the same or other commissioners for reconsideration. This is the extent of the power vested in the court upon this proceeding. I am to consider, therefore, the reasons urged against the confirmation of the report. These grounds of objection may generally be divided into two classes: First, those presented by the owners of property taken for the improvement; and secondly, those presented by the owners of property assessed for benefit to be derived from the improvement. Each will require a separate consideration.

The number of city lots taken for the improvement is about 7,500, for which the commissioners have awarded upwards of five millions of dollars. Of the owners of these lots but about one in forty have appeared to object to the award. The very fact that thirty-nine out of every forty owners of the large tract of land embraced in this proceeding have not deemed it for their interest to object to the report, certainly furnishes very satisfactory evidence that the commissioners have, with eminent success, addressed themselves to the accomplishment of the great task they had assumed, of ascertaining the true value of so vast an amount of property.

The difficulty of their work was evidently very much increased by the fact that the lots to be appraised by them were, for the most part, wholly unproductive. Their value was rather prospective and conjectural, rather than present and real. It is in respect to such property more than any other that the opinions, even of discreet men, will be found to take the widest range. It is no matter of surprise, therefore, that, of so many owners, here and there one should be found who honestly and sincerely feels that he has suffered injustice at the hands of the commissioners. I am myself not without some apprehension that, in a few instances, an inadequate price has in fact been allowed.

Among the most earnest of those who oppose the confirmation of the report, are some, who in December, 1852, purchased at a public sale by the Corporation of New York, a portion of the same lots—none taken entirely for this improvement. I am entirely satisfied that the prices bid upon that sale were generally far above any reasonable appraisal of the lots. The sale amounted to nearly half a million dollars. Of the purchasers, nearly half abandoned their bids before paying anything; others paid their ten per cent upon the sale, but never consummated their purchase, preferring rather to forfeit what they had paid than to pay the balance of the purchase money for the land. It was also stated, upon the hearing, that a large amount of the purchase money had been remitted to the purchasers by the Corporation.

The appraisal of these lots by the commissioners is, I think, about fifty per cent below the prices bid at the Corporation sale. In some instances the award is less than the amount now due to the Corporation upon the bonds and mortgages executed to secure a part only of the purchase money. To such purchasers the decision of the commissioners may well seem severe and unjust. It was with some degree of plausibility that they insisted that having paid these prices to the Corporation now, when the Corporation, against their consent, is about to retake the property, it should not be heard to deny that it is worth what it received upon its sale.

But it is obvious that the commissioners could adopt no such rule of discrimination. It was their single duty to fix what they believed to be the present real value of each lot, taken without regard to the amount it might have cost its owner, or the source from which he derived his title—what may be the equitable relations between these purchasers and the the corporation, when the lots shall be taken, I need not now consider.

It may well be that, in some instances, the Commissioners may have erred in their judgment as to the value of property taken for this great improvement. It would, indeed, be surprising if they had not. But I am not at liberty to deny the motion to confirm their report upon the mere apprehension that they may have thus erred. They have had an opportunity of viewing the premises. They may have obtained the opinions of judicious and well informed men on the subject, and, during the two years they have had the subject before them, may have collected information from many sources which has enlightened their judgment, and enabled them at last to make a just estimate of the value of each of the numerous lots embraced in their report. To allow their judgment, thus deliberately and intelligently formed, to be overcome by the opinions of interested parties, or even the opinions of disinterested witnesses, the value of whose opinions the Court has no means of testing, would be a manifest perversion of the object of the Legislature in providing for this review of the proceedings of the Commissioners. If, in the discharge of their duty, the Commissioners have proceeded in the manner prescribed by law, and have violated no legal principle in making their awards, the Court must be satisfied almost to a demonstration that they have materially erred upon questions of value before it will be justified in sending the report back for reconsideration. I am not convinced that any such error has been committed.

It remains for me now to consider the objections which have been urged against the report by those whose property has been assessed for benefit. By the act relative to public squares and places in the city of New York, passed April 11, 1815, which by the act of 1853 was made applicable to this proceeding, the Commissioners were required, after having made their award of damages to the owners of property to be taken, to proceed to make a just and equitable assessment of the value of the benefit and advantage of the contemplated improvement upon the owners of other lands lying without the limits of the improvement, to the extent of such benefit. It was objected upon the hearing, that in making these assessments, the Commissioners could go beyond the lands fronting upon the proposed public square or place, and those lying within half the distance of the next street or avenue; but in the fourth section of the act of 1815, it expressly declared that upon the opening of a public square or place the Commissioners shall not be confined in their estimate and assessment of benefits to any limit or limits whatsoever.

By the 7th section of an act in relation to the collection of assessments, &c., passed May 14, 1840, it is declared that Commissioners for making estimates and assessments for any improvement authorized by law, shall in no case assess any house, lot, improved or unimproved land, more than one-half the value thereof, as valued by the assessors of the ward in which the same shall be situated. The Commissioners proceeded under this restriction in making their assessments for benefits. It is alleged, and no doubt with truth, that the lands in the immediate neighborhood of the proposed square and which are confessedly to be most benefitted by the improvement, being vacant and unproductive, had been valued by the different ward assessors at prices far below their value, and in some wards at prices relatively below the prices in other wards. The consequence of this restriction upon the power of the Commissioners has been in many instances to relieve the owners of lots most benefitted by the improvement from the payment of an assessment equal to the extent of such benefit, and thus reduce the aggregate amount of the assessments. The whole amount assessed upon the owners of property for benefit is about one million six hundred and fifty thousand dollars. I believe that but for the restriction imposed upon the Commissioners by the act of 1840, a much larger amount of assessment might have been imposed without the least injustice. Of this, however, no one but the Corporation of New York, which is required to make up the deficiency, has the right to complain. Many of this class of persons who appeared to object to the confirmation of the report insisted, not so much that their own assessments were excessive as that when compared with others, they were relatively too high. But this, obviously, does not furnish a good ground of objection. If the objector pays no more than the amount of benefit he receives, it does not lie with him to insist that another pays less.

By the act of 1853 the Corporation of New York is authorized, after applying the amount of the assessments for benefits to the payment of the damages awarded by the Commissioners and the expenses of the proceeding, to raise the deficiency by creating a public stock, to be called "the Central Park Fund," redeemable in forty-five years after the passage of the act, and bearing an interest of five per cent. It is also declared that for the payment of this stock the land to be taken shall be irrevocably pledged. It was insisted that this pledge of the land, involving the right to withdraw it from the public use for which it is taken, is inconsistent with its perpetual dedication to the purposes of a public square, for the benefits of which alone the owners of adjacent lands have been assessed. This, though not much pressed upon the argument, has seemed to me to be by far the most grave objection which has been presented against the validity of the proceeding. It is, perhaps, unnecessary to consider it here. The only power vested in the court is to confirm the report or send it back for revisal. If there be this radical defect in the proceeding, no possible advantage could result from a refusal to confirm the report. But I do not think the objection can be sustained. The land has been taken from its owners for public use. It is to be devoted to the object for which it is taken. The faith of the city, perhaps, of the State is pledged that the loan shall be paid. It is only upon the violation of this faith that the parties assessed can be deprived of the benefits contemplated. Practically they do receive such benefits. The value of their lands is increased by the improvement, and thus they receive an equivalent for the assessment they are required to pay. It may be that, in the language of the counsel who presented this objection, "the assessment of land for benefit implies a covenant for the continuance of that benefit." But if so, the possibility that the benefit may be discontinued does not render the assessment invalid. At the most, it could only furnish the basis of a claim for compensation if the contingency should happen.

A few objections of a more general character deserve to be briefly noticed. Damages are awarded to the Corporation itself for lots included within the limits of the square, to the amount of about six hundred and fifty thousand dollars. It is said that by an ordinance of the Common Council passed in 1844, all the property of the Corporation, including these lots, was sacredly pledged for the payment of the funded debt of the city, and that the Corporation have no right now to divert the lots from this object and devote them to the purpose proposed. It may well be that the creditors of the Corporation have a right to have the amount awarded as the price of these lots in some way secured for their benefit, but whether they have or not, it is a sufficient answer to this objection to say, that it is a question which in no way concerns those who oppose the confirmation of this report.

The same answer applies, too, to the objection that the public property, such as the Arsenal, the Croton Reservoir and Hamilton square, have not been assessed. It is probable that these lands were not assessed for the reason that, on account of the purposes to which they were devoted they would not be benefitted by the contemplated improvement. But whether this be so or not, it does not lie with others who have been assessed to object that for any reason these have been omitted.

It is also objected that the Commissioners had no right, in making their award, to declare that the amount due the Corporation for unpaid taxes and assessments should be deducted from the amount of the award for the same lots. This may be so; but this declaration in the report is entirely harmless. The amount of the awards by the Commissioners, by the terms of the act of 1853, will become a debt against the Corporation, due and payable immediately upon the confirmation of the report. If those entitled to receive these awards are themselves indebted to the Corporation for taxes or assessments, it did not require the authority of the Commissioners to set off one debt against another.

An objection is now taken for the first time to the validity of the appointment of the Commissioners. The order for the appointment was made by Mr. Justice Mitchell, and it is now said that he is a relative to one of the parties assessed for benefit. The objection is untenable. Judge Mitchell might not now sit to hear this motion for confirmation. The parties assessed for benefit are now parties to the proceeding. But when he entertained the motion for the appointment of Commissioners, they were not, and, of course, he was not legally disqualified. The fact that the relative has been brought within the range of assessment, is alone sufficient to show that the objection is altogether technical.

Again, it is objected that Mr. Brady, one of the Commissioners, is a brother to two of the owners of lots taken for the improvement, to whom damages have been awarded. This might have furnished a proper ground of objection to be addressed to the discretionary power of the court, upon the appointment of the Commissioners, but it in no way affects the validity of the report. The law declares that no judge of any court shall sit in any cause in which a relative within the ninth degree is a party. This prohibition relates entirely to courts of justice, and not to a special statutory proceeding like this. Those who made this objection frankly admitted that it derived no support from the amount of the award.

I have thus noticed the principal grounds which have been urged against the confirmation of this report; I have, also, since the argument, carefully examined all the objections and affidavits filed with the Commissioners by those who now resist the confirmation. There are a few cases of individual hardship which have my sympathy, and for which I would gladly provide some relief. But my examination has resulted in the full conviction that no legal errors have been committed in the proceeding, and that the report is, in the whole, pre-eminently judicious and equitable. I have no hesitation, therefore, in directing that an order be entered for its confirmation.

Mr. Mott was proceeding to make some exceptions when

Mr. Dillon said that the decision of this Court was final and the matter could not be appealed.

The Court would permit Mr. Mott to read his exceptions, but he could not order the paper to be filed. The counsel might go before the general term and make his motion.

Allegations Respecting American Trade with Russia.

[To the Editor of the London News.]

SIR—The spirit of fairness uniformly shown by your journal towards America, induces me to ask a place in your columns for the refutation of certain calumnies recently circulated respecting American ships trading with Russia.

In the "City Article" of the *Times* of the 8th inst., it was stated that "some American vessels had got into Archangel last autumn, bringing large supplies of arms and other munitions of war, and afterwards cleared with cargoes." The same story had been circulated some two months before, and fully refuted by a well known London merchant, in a letter published in the *Times*. On the 10th ult., in the large type of "Our Own Correspondent," from Berlin, (repeated as usual, next morning,) it was stated that "the American clipper Wolga put to sea on Christmas-eve" from the Sound; and the writer adds, "it seems certain that this vessel had a valuable cargo, chiefly of arms, on board, and had been waiting so long in those waters for an opportunity of bringing them in safety to the Russian coast." A similar statement, with various additional particulars and surmises, had appeared in the same morning (first edition of the *Times*, 10th inst.,) under the form of a "Letter from Copenhagen, Jan. 2."

Being myself closely connected with the owners and charterers of the vessels referred to, and having the fullest knowledge of their character, cargoes and destinations, I had it in my power to contradict most positively every word of the above statements, and I lost no time in writing to the *Times* to that effect; but no notice has been taken of my communications. Permit me, therefore, here to state, that of the only two American vessels which were at Archangel last autumn, one arrived from London in ballast, the other from Laguna (having touched merely at intermediate ports for orders), with a full cargo of logwood. Neither of them had on board any arms, munitions, or other contraband of war whatever. The Volga, whose long stay at Copenhagen has given rise to so many newspaper paragraphs, was loaded solely with logwood and cotton. Her captain, Holm, was born in Denmark, but emigrated when very young, and has for many years been a naturalized American citizen. Finding himself—very naturally—an object of suspicion to his British neighbors at Copenhagen, he offered, in a spirit of fairness which I should be glad to see imitated by the *Times*, to allow his ship to be unloaded and searched by them, and to bear the expense in case any contraband of war should be found on board. His offer was at first accepted, and then declined as unnecessary; but for mutual satisfaction the captain of the Wolga made affidavit before the American Consul at Copenhagen that his cargo consisted solely of cotton and logwood; and in return the commander of the British war steamer Dragon gave him a certificate, entirely exonerating him from suspicion.

The Washington *Union* might, perhaps, stigmatize this transaction as a disgrace to the American flag, and the *Times* may sneer at the English commander who allowed himself to be humbugged by a lying Yankee; but will not any right-minded man of either nation approve the candid and conciliatory spirit shown by both parties, as worthy of their respective positions and countries?

I will only add that I can vouch personally for the entire accuracy of this statement, and the utter falsehood of the allegations contained in the *Times*. I enclose my card, and remain, yours, &c.

AN AMERICAN MERCHANT.

LONDON, Jan. 14, 1856.

A PETRIFIED INDIAN.—While engaged in excavating recently, upon the Milwaukie and La Crosse Railroad, near Schleisergerville, Iowa, the workmen came upon the petrified remains of an Indian, and with the remains some singular relics of olden times. The body was perfect, not having suffered by decay. His height, at the present time, would be considered gigantic, measuring 7 feet 2 inches. On his breast was a plate of copper, on which were engraved numerous heiroglyphics, the meaning of which can hardly be imagined. But they are a record of the past. Could these heiroglyphics be read, they might, perhaps, unveil some of the mystery which hangs like a dark cloud over the history of the red man. An arrow of considerable strength and curious construction was also found with him, and especially invites the attention of antiquarians.

American Novels Reviewed in Europe.

[From the London Athenæum, Jan. 12.]

We have had occasion from time to time to record our opinion of the mediocrity of American books which come in shoals into our cheap literature: gentle dulness and mild zeal of a semi-religious character, have been generally the worst faults to be laid to their charge. The highly improbable cast of characters and incidents have raised a certain wonder how rational beings could be found to take delight in such reading. Some novels from the same prolific source, which are now before us, are of a more pretentious class, and have sins of deeper dye. If they come to this country as average specimens of full grown American novels, or if they furnish only a remotely resembling picture of American society, we can only say, woe be to the nation that is in such a case. The first point that strikes a stranger is the evidence of the deeply seated influence of French novels. The descriptions of places and characters, the conversation, the tone of thought, all evince an ambitious, restless desire to write, speak, think describe like Balzac, Dumas and Eugene Sue. The effect is curious, and resembles a parcel of distant colonists dressed up in second hand European finery. There is a total absence of wholesome individuality; but, instead, there are French fashion and imitation of French refinement. The flunkeyism is, however, genuine enough, and is shown in the love of titles—in the worship of pomps and vanities, fine clothes, fine upholstery, and French cookery. If the reader be inclined to think we are severe, we will proceed to show cause for our judgment.

HELEN LEESON professes to be a "peep at New York society." Helen is the beautiful daughter of an extravagant American merchant on the verge of bankruptcy, whose only hope is that Helen will make some brilliant match. Her dresses are described at full length, and with all the minuteness of a *petit courrier des dames*. Two Englishmen, Lord De Vere and his nephew Sir Archibald Courtney, are going the round of fashionable hospitalities, and Helen Leeson captivates Sir Archibald. The Americans are as ignorant as the French about English titles. If they will insist upon ornamenting their discourse with coronets, we entreat them to understand that a baronet is not addressed as "My Lord," nor is he a nobleman. As Helen, looking surpassingly lovely in a dress of white tulle embroidered with gold, her fair brow crowned with a wreath of golden grapes, leaves the ball at three in the morning, "a joyful sensation filled her heart as she repeated to herself, 'Lady Courtney's carriage.'" But alas! "the best laid schemes of men and mice gang oft a-jee,"—as she is driving home, without escort or *chaperon*, the carriage stops, the door suddenly opens, and a man springs into it, calling out to the driver, "Roger—go on." She is addressed "in a mild voice," which is entirely unknown to her, entreating her not to be terrified—upon which she faints away; and her companion, who had apparently prepared himself for the emergency, "bathes her temples with Cologne water." She is then taken to a lonely country house, where in "a small parlor dimly illuminated," she sees an elderly gentleman, who tells her a long rambling story about his wrongs and his revenge, at the end of which the door of another room opens and discloses a clergyman standing in his robes. Helen, after tearing off her "wreath of golden grapes," is married in due form to a man whose name she does not know, and is sent home in her carriage, and in a paroxysm of despair. She asks the friend to whom she confides her misfortune, "just as fate was smiling upon me—just as so fair a prospect was before me—and what will Sir Archibald think of the change in my manner?" "Come, come, Elley," replies her friend, "you do not care for that young insignificant shoot of English nobility." The husband who is represented as a victim to an unfortunate passion for his unwilling bride, after a vain attempt to soften her heart, takes his passage in the steamer Atlantic, and abandons his home and his country for ever. Helen, after his departure, keeps her own counsel, and plunges into all the "festivities of the season;" but when Walter Gray, as her mysterious husband is called, has fairly gone beyond recall, she proceeds to fall in love with his memory. The author, having highly blamed her previous insensibility, proceeds to reward her virtue in relenting. She is taken a journey to Europe; and, whilst travelling in Switzerland, is overtaken by a storm, and driven for shelter to a picturesque cottage, which she finds furnished with "maroon-colored velvet," in a style of elegant upholstery; and in a small sanctuary, "ten feet square, and entirely hung with folds of crimson velvet," with an elegant gilt lamp hanging from the ceiling, she sees a pedestal of beautifully wrought white marble, upon which lay the "wreath of golden grapes," she had "torn off" on the occasion of her marriage. Suddenly her husband stands before her; and, after some fainting away, there is a rapturous reconciliation. He explains his sudden apparition by telling her that when he left her in despair of ever winning her affections, he purchased this cottage. "I then proceeded to furnish it to suit my misanthropic tastes,—to surround myself with everything that could soothe my blighted spirit." They are married over again with their own full consent, and go back to America, where they live happy ever after. But there is yet a moral to this tale, which is too characteristic to be omitted. Shortly after marriage, Helen is invited to a family festival, for which she has no dress. She receives "a box containing a white *moire antique* dress, with thread lace flounces, and an exquisite *coiffure* of white feathers." "How have I deserved so much love!" exclaimed Helen. "By walking steadily in the path of duty," whispered Anna. The reward of virtue can no further go!

LILY, by the author of "Busy Moments of an Idle Woman," cannot boast the absurdity of "Helen Leeson"; but it has the same original sins of pride, vanity, and vulgarity: the dressing of the heroines and the adorning of their boudoirs might serve as advertisements for the mantua-makers and upholsterers. There is a worldly young man, who is engaged to the good heroine, but who carries on a desperate flirtation with the bad heroine—an imitation French coquette—who sweeps about, superbly dressed, "with magnificent action and voluminous skirts," and who writes letters upon tea green paper, with initials in dead gold, wherein she praises Lily, the heroine, for being "so circumspect, so dignified, and so intolerant of double *entendres*, fulsome compliments, and free and easy manners." The hero, we are sorry to say, has a Creole mistress; who, stung with jealousy, poisons Lily on the eve of her wedding day, and then goes and drowns herself; but this catastrophe comes so unexpectedly upon the unprepared reader that it drops like a stone, and makes little or no impression. Those who wish to know the choice conversation in fashionable American society can find specimens here of Americans as painted by themselves.

CASTE: A STORY OF REPUBLICAN EQUALITY, by S. A. Storey, Jr., is a novel of greater talent than the preceding ones, and belongs to a better class of books. The interest turns upon the painful social difficulties entailed upon all who have colored blood in their veins. It is a story of social slave life, far more capable of interest to Europeans than any negro wrongs, however eloquently detailed. The heroine is a quadroon, but ignorant of her parentage. She is on the point of marriage with the son of a wealthy planter, when the secret of her birth is revealed. Her mother had been a beautiful half-caste slave, and she is herself born a slave; the laws of the State render marriages between colored persons and whites illegal. The situation is full of painful interest. The heroine's brother, a slave, and a quadroon like herself, has married, and is living happily with his young wife, in a free State, when the tidings reach him, and all the ties of social life melt like wax before the fatal fact—that he is not a white man. The interest of the book hinges entirely upon the truth of the situations, and upon the evil fate that overtakes two innocent creatures who have done nothing to deserve, and can do nothing to avert, their destiny. The story, as a story, might have been better written and more broadly worked out. There is a general feebleness of effect as contrasted with what might have been made of the subject; but the social question of slavery is treated with a temperateness that shows a wise and discerning spirit.

Veterans of the last War at Albany.

GENERAL ORDERS.

HEADQUARTERS, ALBANY, Feb. 1, 1856.

The General-in-Chief strongly recommends, and hereby directs, that a convention of the officers and soldiers of the war of 1812, residing in the several counties of the State of New York, who will appear in person or by delegates at the American Hotel, in the city of Albany, shall assemble on the twenty-second day of February instant, to commemorate the birth day of the illustrious Washington; to memorialize the Legislature to appropriate the necessary funds to pay their claims for clothing and incidental expenses incurred in that war, and solemnly admitted to be due to them by statute, and to transact such other business as the occasion may require.

To celebrate in a becoming manner a day marked in the history of the nation as memorable for the birth of a great and good man, whose fame and services are dear to every American heart, his memory cherished with mingled feelings of profound reverence and filial regard, and whose glorious name the free spirits of the world delight to honor, the undersigned in the name of the survivors of the brave and patriotic soldiers of the war of 1812, whom he has the honor to represent, hereby cordially and most respectfully invite His Excellency the Governor of the State of New York and suite, the honorable members of the Senate and House of Assembly, the Corporation and citizens of Albany, the several military fire and civic companies in the city of Albany and in the adjoining cities and towns, to unite with them in the ceremonies and military proceedings of the day.

To consummate this arrangement the General-in-Chief respectfully requests the Hon. John W. Harcourt, Lieutenant Colonel of the 25th Regiment, to officiate as Marshal, and Capt. Joshua Munroe, Capt. John J. Robbins, Lieut. S. H. Drennon, Lieut. Christopher Hess, and Lieut. John Evera, of the city of Albany, and Livingston Spraker, esq. of Palatine, as assistant Marshals of the day. And he begs leave to designate as a committee of arrangements the following named officer and gentlemen:—Gen. Wm. Seymour, Gen. Thomas Machin, Col. Lemuel Jenkins, Col. Peter Osterhout, Col. F. P. Bellinger, and Hon. James Rider, of the Senate, and Hon. G. Denniston and Hon. Caleb Goodrich and Hon. Isaac Woods of the Assembly.

JOHN S. VAN RENSSELAER, General-in-Chief of the Veterans of 1812 in the State of New York.

Dr. Kane's Arctic Expedition.

TO THE EDITOR OF THE LONDON TIMES.

SIR:—Dr. Kane's official despatches, with the chart of his Arctic discoveries, are now before the public. As I apprehended, they clear away all the obscurity contained in the newspaper accounts and unquestionably place Dr. Kane in the foremost rank of Arctic explorers.

Had he heard the hearty cheer which, at the suggestion of the hydrographer, was raised to his honor last night in the rooms of the Geographical Society by the crowded audience who heard his modest yet extraordinary narrative, he would, I am sure, have been highly gratified.

Having heard from friends in the United States that a letter of mine in your columns has had the effect of leading to an erroneous idea, that Dr. Kane's arduous and heroic undertaking was not duly appreciated in this country, I shall feel greatly obliged by the publication of this communication, which I trust will have the effect of assuring the gallant doctor that he is highly esteemed and admired by all who take an interest in Arctic exploration.

I may be permitted to add an interesting fact which does not appear in his official despatch to the Admiralty, [Navy Department,] but which he communicates in a letter to a friend. It is that although the temperature at the winter quarters of the expedition was colder than has ever been experienced in the Arctic regions, that of the open water to the north was comparatively very high, and a great variety of animal life was seen, including whales and plant-eating birds. I am, sir, your obedient servant,

C. R. WELD.

SOMERSET HOUSE, Jan. 15, 1856

The African Roscius in a Crim. Con. Trial.

PROGRESS OF THE NEGRO RACE IN ENGLAND—DAMAGES FOR THE PLAINTIFF.

[From the London News, Jan. 18.]

Stothard vs. Aldridge.

In the Court of Queen's Bench yesterday this action excited a good deal of interest.

Mr. James, Queen's Counsel, in opening the plaintiff's case, said that he sought to recover compensation in damages for the seduction of his wife by the defendant. The plaintiff was a very young man; a surgeon, at Hull. The defendant had assumed considerable reputation as an actor, under the name of the "African Roscius," and he was well calculated to play certain parts, being "colored" by nature, and he had amassed a considerable sum of money. The plaintiff was now carrying on the business of a surgeon dentist, but in 1849 he had taken a fancy to try his fortune on the stage, and, having heard of the celebrity of the defendant, he went to Liverpool, where the defendant was then "starring" it as the "African Roscius." He introduced himself to the defendant, and it ended in his offering to teach the plaintiff for a sum of £50. The standing of a reversion to which he was entitled for a small of money, and he gave the defendant £50. The young man was sent to Hull, Liverpool, Wales, and other places. Soon after this, upon the introduction of the defendant, the plaintiff was induced, at the age of eighteen, to marry a young girl who resided where they lodged, at 22 Judd place, New road. They were married on the 15th August, 1849; the defendant was present, and gave the young woman away. After marriage, the defendant sent the plaintiff upon a theatrical engagement to Wales. He took his wife, and she remained there with him for some few months, when, finding he could not afford to take her the different circuits with him, he sent her to her mother's at Tonbridge Wells, and during the separation the defendant had taken advantage of the opportunity and had seduced the wife. He had conducted himself with all the arts of a practised seducer, and the consequence was, that in March, 1853, the wife gave birth to a child. At the time of her pregnancy, the defendant, who was performing in Germany, wrote this letter to the wife:—

MY DEAR EMMA—Your letter has just now reached me, and I am very much surprised at its contents. You may be mistaken. You say William (the husband) has been with you, and is it not likely that his visits have occasioned this mischief? However, write me particulars immediately—tell me everything—what you intend doing and where you mean to go, and I will make a remittance. Has Mrs. A. questioned you in connection with me? and if so, what passed? How is your aunt? Where is William? What brought him to town? Yours sincerely,

IRA.

After Mrs. Stothard was confined his tone became altered, and he wrote her this letter:—

DEAR MADAM—You would not have been neglected but I had some communications made to me of most imprudent conduct on your part, which very much annoyed me, and caused me not to address you again. I do so now, however, and if you give me the assurance that the child is "of color," and that the father is the person you name (himself)—you understand me—both you and your child shall not be neglected. Is it a boy or a girl? Write by return, enclosing the same in the envelope I send you. Seal mine up and then direct it to me. Do not pay the postage. Tell me, does your mother know whose child it is, and is she unkind to you? Did your aunt leave you anything? Yours faithfully,

IRA.

He would prove that the child was of "color." The child was now dead. He would produce the evidence before them, and would ask them to give such damages as would mark their sense of the defendant's conducted.

The formal proofs of the marriage on the 15th of August, 1849, were put in.

It was proved that the defendant had acted under the name of the African Roscius. He was a black star, but rather a desirable one. He played both tragedy and comedy well.

Mrs. Ingledew—I am the mother of Mrs. Stothard; she is now thirty years of age; I saw the plaintiff just before they were married; she was then with me at Tonbridge Wells; the plaintiff came down to take her to be married; I was unfavorable to the marriage; in seven or eight months after the marriage she returned to me; I objected to the match on account of the plaintiff being a performer; she had previously been residing with her aunt in London; the defendant lodged with her aunt, and it was there the plaintiff first saw my daughter; her aunt died, and I then went to London, and my daughter then found had been confined on the 15th March, 1853; I saw the child; it was a colored boy; my daughter lived with me after her marriage, because her husband could not support her, he earning so little; she took in needlework; she still remains with me.

Cross-examined.—I opposed the marriage very strongly; my daughter had resided for some years with her aunt; Mr. and Mrs. Aldridge lodged in the same house; a Mrs. Groom kept the house; my daughter has only had two children; the first was by her husband, and was born ten months after the marriage; the other child was the one of color; my daughter never complained of the treatment of her husband; I have not seen the plaintiff since the summer; my daughter is not living with him; nor has she done so for the last six years; she works at her needle for a living; she upbraided him for neglecting her, but he said he had written letters to her which she had not received; I am in indigent circumstances; she was confined of her first child in the Lying-in-Hospital; I don't know where her husband was at the time; he wrote to her in the hospital, saying that his aunt wished to know whether he was married, and if inquiries were made he requested his wife to say they were not married.

Re-examined.—When she wrote to him complaining of neglect, he answered that he earned so little he really could not send her money.

Susannah Burgess—Mrs. Stothard came and lodged with me in 1853, and during the time she was confined of a colored child; I know the defendant; I saw him and said to him, "Do you remember Emma Stothard?" he said, "Perfectly well;" I said she had a child, of which he was the father; he seemed confused, and asked me why I said he was the father? I said, "because it is so much like you;" he said, "she is married;" I said, "I know that, but white men don't beget black children;" he said, "are you a mother?" I said I had had nine children, but I had never had a black one; she was confined at my house, and told me Aldridge would remunerate me; he said he could not give me anything just then, but if I would leave my address he would send to me; shortly after that I wrote to him, and he sent word that I was to go to his house; I went there on the 19th of May, and he gave me 5s.; he said, "I don't give you that on Emma's account, but for your family;" I had not applied to him before because he was not in England; the child was born on the 15th of March, 1853; I was godmother to it.

Mrs. Matthews—I had this child to nurse when it was five months old; it was a colored child; it died with me; Mrs. Stothard went to the funeral.

Mr. Smedly—I am a surgeon living in Judd place, New road; the child was brought to my house; it died of dysentery, and I certified the cause of death; it was colored, and had woolly hair.

Mr. Dillon—I am a theatrical agent; I know the defendant, and have done so for thirty years; he is about 50; I have repeatedly made engagements for him; he is now in Cork.

Richard Norman—I am an actor at the Surrey theatre; I know the plaintiff; he went by the name of Stewart; he was acting with me at the minor theatre in Liverpool for nearly twelve months; I should say he earned about a guinea a week; he played "utility" parts in anything; he was a little, fair man, about 22.

Mr. Serjeant Wilkins then addressed the Judge for the defendant, contending that there was no proof that these parties were the persons who were married.

The learned Judge thought the evidence was sufficient to go to the jury.

Mr. James then summed up the evidence he had called.

Mr. Sergeant Wilkins then addressed the jury for the defendant. Mr. Justice Williams, when at the bar, had addressed a Welsh jury, and then said he would call witnesses in support of his speech, but was interrupted by the jury, who said he need not trouble himself, as they believed every word he had said. If, therefore, they believed Mr. James, this was a very bad case. But how was that speech supported by the evidence? Many things had been stated, but little had been proved. There was no proof of the defendant having introduced the plaintiff to his wife, or that he had given her away. What evidence was there of any seduction? Let them look at this heart-broken husband. Why, he had never lived with his wife for six years. According to the evidence of her mother, he had left her to the mercy of the world. Had he not sworn to take her for better or worse? And yet he had sent her from him, and there was no proof of his having ever sent her a farthing. Was it true that he had written to his wife, telling her to deny the marriage, and hold herself out as a woman of shame? Was that true? Her mother said it was. What loss had the plaintiff sustained? The proof of adultery was very slight. Aldridge was not the only man of color. Othello was a Moor—a handsome man; but Aldridge was an African. What would they say of a lady who would fall to the arts and devices of a "nigger?" The moment a woman yielded to those desires which were a curse of her nature, then the word "seduction" was introduced. When the treasure was in the plaintiff's hands he had thrown it away and trampled upon it. Where, then, was the claim for damages?

The learned Judge summed up.

The jury returned a verdict, for the plaintiff, damages 40s.

Effects of the Cold Weather at the South.

A few days ago we read in the New Orleans papers an account of a large fire in that city, the disastrous result of which was attributable to the fact that the fire department was unable to properly do their duty, owing to the intense cold which was prevailing at the time, the thermometer being down to the freezing point. Below, we give some further evidence of the chilling effect of the weather upon the energies of our Southern friends. The Pensacola, Florida, *Democrat*, of the 24th ult., says:—

We beg the indulgence of our readers for the meagre appearance of our paper to-day. It is due to the opening of the doors of Æolus' ice house, for the last few days, with its accompanying boreal blasts, and consequent discomfort to every one. It was almost impossible for us to work. The result of such an event, in our vicinity, has been also disastrous to all varieties of vegetation, and many of our orange trees have been very badly dealt by.

The Montgomery, Alabama, *Mail*, of the 29th ult., contains the following announcement:—

Owing to the cold weather, Rev. S. D. Baldwin was unable to fill his appointment to lecture on Monday night, but will be in place as soon as the weather will permit.

INCIDENTS OF THE MONTH.—The following are some of the principal events which have occurred during the month of February, in time past:—

1—First Presidential election in United States, 1789.
2—Lorenzo Dow died, 1834.
3—Slavery abolished in French colonies, 1794.
4—John Rogers burnt, 1555; eight steamboats burnt at New Orleans and 37 lives lost.
6—Earthquake in New England, 1726.
8—Mary, Queen of Scots died, 1587.
9—Harrison born, 1773.
11—De Witt Clinton died, 1828.
12—Peace with Great Britain, 1815.
13—Monasteries suppressed in France, 1700.
14—Valentine's day.
15—Galileo born, 1564.
16—Melancthon born, 1497.
17—Michael Angelo died, 1563; Russians at Eupatoria routed by the Turks under Omar Pacha, 1855.
18—Vermont admitted into the Union, 1791; Luther died, 1546.
19—Florida ceded to the United States, 1821.
20—Voltaire born, 1694; Bellamy born, 1719.
21—Robert Hall died, 1831.
22—Washington born, 1732.
23—Florida ceded to the United States, 1819; J. Q. Adams died, 1848.
24—Fulton died, 1815.
25—Printing introduced in New York, 1693.
26—Napoleon leaves Elba, 1815.
27—Earthquake at Broussa, 600 killed and wounded, 1855.