THE COURTS.

Proceedings in the Courts Yesterday.

The Clark-Bininger Bankrupt Case—Decisions in the United States Circuit Court—The Rulings in the State Court Not to be Interfered With—Fraudulent Income Returns—The Drawback Frauds—The Seward Will Case—A Dog Case.

UNITED STATES CIRCUIT COURT.

The Clark-Bininger Bankrupt Case—Writ of Prohibition Denied.

Before Judge Woodruff.

In the Matter of the Petition of Abraham Bininger et al. (who are creditors of the said Bininger and Abraham B. Clark) for a Writ of Prohibition.—Judge Woodruff, in rendering decision in this case, says:—The petition shows that upon the petition of creditors of Abraham Bininger and Abraham B. Clark, composing the firm of A. Bininger & Co., the latter have, by a decree of the District Court, been adjudged bankrupt, and that the said Clark is now prosecuting in this court, in pursuance of the second section of the Bankrupt law, a proceeding for the review of that adjudication; that prior to the institution of the proceedings in bankruptcy in the District Court the said Clark had filed his bill in the Superior Court of the city of New York against his partner, Bininger, for an accounting and for the settlement of the affairs of the copartnership, the payment of the debts and the distribution of the assets, and therein a receiver had been appointed who was, or claimed to be, in the possession of the property of the firm; that after the proceedings in bankruptcy were instituted the said Clark commenced successively two actions in the said court, and procured from that tribunal injunctions restraining the petitioning creditors from prosecuting the said proceedings. What, then, is the jurisdiction which this court has over the proceedings set forth in the petition? First—By a petition of review Clark, the plaintiff, in the actions in the Superior Court, has sought in this court a review of the decree of the District Court, wherein he is adjudged a bankrupt, and, for the purposes of that review this court has acquired jurisdiction of those proceedings. But the exercise of that jurisdiction is in no wise obstructed or interfered with by the actions prosecuted by him in the Superior Court. He may pursue that appeal to the revisory power of this court, and the respondents therein may here insist upon the correctness of the decree of the District Court, and this court will proceed to hear and reverse or affirm that decree, entirely unaffected by the pendency or the prosecution of those actions, and the action of this court in the matter of that review terminates with such affirmance or reversal. If such decree is affirmed, the decree of the District Court stands as the decree of that court and not of this, and to be carried into due execution by that and not this court. Second—The argument of the counsel for the petitioners involves the assumption that by force of the second section of the act of Congress commonly called the Bankrupt law, this court possesses, concurrently with the District Court, all the powers conferred by the first section upon the last named court. And, therefore, whatever impedes the execution of the decrees of the District Court or obstructs or interferes with the administration of the estate of the bankrupts by that court warrants the petitioners in insisting that the exercise of the jurisdiction of this court is obstructed or hindered and in claiming in this court that the writ of prohibition is necessary. In the first place this overlooks the familiar doctrine that where the jurisdiction of the two courts is concurrent the one which first obtains jurisdiction of the subject matter and of the parties by the actual institution of proceedings therein holds such jurisdiction exclusively of the other. But in the next place the act of Congress does not so blend or confound the two courts in the administration of the Bankrupt law. The courts are distinct under that act, as under all others, and exercise a separate jurisdiction, each in its own sphere. For the purpose of carrying out the provisions of the Bankrupt law the District Court has ample and exclusive power. This jurisdiction, which is given for revisory and perhaps advisory purposes to the Circuit Court, it can exercise, notwithstanding the pendency and the prosecution of the actions mentioned in the petition herein. The exercise of that jurisdiction is not obstructed by anything shown by the petition. The jurisdiction of this court in the case in question, so far as shown by the petition for the writ of prohibition, arises on a petition for a review of the adjudication made in the District Court, declaring Bininger & Clark bankrupts. There is no impediment to the exercise of that jurisdiction, the alleged proceedings in the State court in nowise interfere therewith. A prohibition of such action in the State court as is set out in the petition is not necessary for the exercise of any jurisdiction in the matter of the bankruptcy of Bininger & Clark, which the Circuit Court has acquired. This court can review, in the manner and for all the purposes contemplated by the second section of this act, the orders, decisions and decrees already made or which may be made in the District Court. Such review cannot be rendered inoperative or ineffectual by any action of the State court. It belongs to the District Court and not to this to carry into execution its orders and decrees. It, therefore, it was assumed that a State court stands in such a relation to the federal court that, "agreeably to the principles and usages of law," a writ of prohibition could be issued by the latter to the former, the petition before us does not present a case in which such writ is necessary to the exercise of our jurisdiction. I have preferred to place the opinion upon the grounds above stated, not only because these questions of the construction of the second section are of immediate practical importance, but also because they are directly involved in and are decisive of other motions pending before us in the same proceedings in bankruptcy mentioned in the petition. The motion must be denied.

Another Phase of the Bininger-Clark Case—Petition to Have the Property Now Under Seizure by Judgment of the State Court Delivered to the United States Marshal.

In the Matter of Abraham B. Clark and Abraham Bininger, Bankrupts, on the Petition of John S. Beecher, Assignee in Bankruptcy of the Estate and Effects of the said Bankrupts.—Judge Woodruff says:—The petitioner herein applies for an order directing the Marshal to take possession of the joint estate and property of the above mentioned bankrupts, an order restraining and enjoining the bankrupts and certain persons heretofore appointed receivers of the said joint property (in an action pending in one of the State courts between the said bankrupts for the settlement of their copartnership affairs) from any interference with the said property, "to the end that the said property may be brought within the jurisdiction of the District Court for the Southern district of New York, or within the jurisdiction of this court. And that the District Court, or this court, may collect the assets of the said bankrupts, ascertain and liquidate liens, adjust priorities and conflicting interests, marshal and dispose of the funds so as to secure the rights of all parties, and make due distribution among all the creditors; and that thereupon the proceedings on this petition may be continued by order of this court in the said District Court, and that the said Clark may be restrained and enjoined from further prosecuting his said action against Bininger in the State court, and that he be directed to permit the petitioner (assignee in bankruptcy) to prosecute such action in the name of the said Clark, and by such attorney as the petitioner may employ, and for such other or further order or relief as may be proper.

The Question as to the Jurisdiction of the Federal and State Courts in Bankruptcy Proceedings.

In the Matter of Abraham Bininger and Abraham B. Clark, Bankrupts—John S. Beecher vs. Abraham Bininger et al.—Judge Woodruff again says:—In deciding the various motions which have been presented to the court in the above proceedings, the facts alleged and the claims of the parties have been more than once recited. For the understanding of the present motion it will suffice to say that Abraham B. Clark has brought this petition of review to this court, alleging that the decree of the District Court adjudging him and his copartner Bininger bankrupts is erroneous and ought to be reversed. He has also commenced actions against the petitioning creditors in the Superior Court of the city of New York, complaining of the conduct of those creditors in petitioning for such decree, alleging that the decree is erroneous in law and in fact, and that it was sought through improper motives and by collusion with his late partner, and has obtained a temporary injunction to restrain their prosecuting their proceedings. The petitioning creditors now move that this Court by its order require him to elect whether he will further prosecute his petition of review in this court or those actions in the State court, and that unless he elect to abandon and discontinue the latter, his said petition of review be dismissed. It would not be respectful to the State tribunal to assume that the decree or judgment of the District Court or of this court would not there be regarded as conclusive for all the purpose for which it is conclusive here. That, however, is not to be discussed on this motion. If the petitioner prosecutes his review in due form and be without fault therein, we deem it proper to hear it. We must, therefore, decline to require the petitioner to make the election sought on pain of a dismissal of his proceedings.

SUPERIOR COURT—CHAMBERS.

The Clark-Bininger Case Again—"The Court Knows Itself."

Before Judge McCunn.

Clark vs. Bininger.—Upon the pending motions in this case, to punish for contempt, coming up yesterday, all the parties appeared in court, and as some of the counsel said they had not seen the opinions delivered by Judge Woodruff in the Circuit Court of the United States, it was proposed to adjourn the hearing of the motions.

Mr. Compton said that while he had no desire to push the argument in the premises, yet counsel were now engaged, notwithstanding Judge Woodruff's decision, in making a new motion before the Bankrupt Court to have the Marshal take possession of the property of Clark and Bininger.

Judge McCunn interrupted counsel and said—"You need not be alarmed about the bankrupt court's getting possession of the assets of this firm. This court will return at all hazards the property now in its control. Judge Woodruff has, as this court understands, decided nearly all the questions in favor of the jurisdiction of this court, and while we will submit most cheerfully to all Judge Woodruff may suggest or do, yet we will take great care that no interference on the part of the bankrupt court or its marshal shall take place. The Sheriff's officers are now in full possession, and will remain so until the questions of jurisdiction are fully determined." The motions are postponed, accordingly, until a week from to-day.

SUPERIOR COURT—SPECIAL TERM.

A Policeman in Contempt of an Order of the Court—Another Attachment Case.

Before Judge Spencer.

John W. Morrow vs. James W. Walker.—The plaintiff recovered a judgment against the defendant, a policeman, in 1867. After the recovery supplemental proceedings to execution were taken out, and on the return day of the order Walker was detailed on duty, and could not put in an appearance. Judge McCunn, not deeming this a good excuse, ordered a commitment for contempt to issue against him. On the return day of this second order Mr. Tallman, counsel for Walker, appeared and stated to the Court that the defendant was sick and unable to attend. Judge McCunn again held that that was no excuse, and ordered testimony to be taken to determine whether the man had been properly served or not. Finally the Court issued another attachment against Walker for contempt, and directing him to pay the judgment of the plaintiff and $250 costs. Subsequent to this the attachment was withdrawn, and from 1867 to the 11th of January of the present year the matter has been held in abeyance. On the 11th of January the Judge issued an attachment to the Sheriff directing him to lock Walker up and keep him in jail until he paid $750—the amount of the judgment and costs. From that order the defendant appealed, and now the motion comes up for a stay of proceedings until that appeal shall have been argued.

Judge Spencer said that unless there was some good authority shown to the court to the contrary he would grant the stay.

The matter was accordingly adjourned to give counsel an opportunity to produce authorities.

SUPERIOR COURT—TRIAL TERM—PART 2.

Fraud in the Issue of Commercial Paper.

Before Judge Jones.

Yale National Bank of New Haven vs. J. A. Weisse.—This action was brought by the plaintiff to recover the amount of a note made by the defendant for $5,000, and which was passed to a third party, who repassed it to plaintiff. The defence interposed was that the plaintiff was not *de facto* the holder of the note for a consideration, and that the person who passed it to him had obtained it from the defendant by fraud. During the progress of the trial the testimony for the defence developed the fact that after the discovery of the fraud set up in the answer he had voluntarily renewed the note, upon which the present suit was brought.

Judge Jones held that this act of the defendant was a waiver of the original fraud, and directed the jury to find for plaintiff, which they did in the sum of $5,423 10.

UNITED STATES COMMISSIONERS' COURT.

Fraudulent Income Returns—Collector Bailey's Raid on Merchants Charged with Making False Returns of Their Incomes.

Before Commissioner Osborn.

The United States vs. John H. Anderson.—The defendant appeared yesterday for examination, charged with making a false and fraudulent return of his income to the assessor and collector of the Thirty-second Collection district. Collector Bailey, with his usual perseverance and zeal in the faithful discharge of his duties as Collector of the most important district in this city, has been recently closely engaged in examining alleged fraudulent income returns said to have been made by persons doing business as merchants and commercial men in this city. In the case of Anderson, the defendant, the following affidavit has been sworn to and placed on file in the office of the United States District Attorney:—

United States District Court, ss., Southern District of New York:—Moses F. Webb, being duly sworn, deposes and says that, as he is informed and believes, on or about the 6th day of March, 1869, in the Southern district of New York, John H. Anderson, doing business at 89 Franklin street and residing at No. 106 West Forty-first street, did deliver or disclose to the Assistant Assessor of Internal Revenue of the district in which he resides a false or fraudulent return, account or statement of his income, gains or profits for the year ending December 31, 1868, with intent to defeat or evade the valuation, enumeration or assessment intended to be made in violation of the statutes of the United States in such cases made and provided. M. F. WEBB.

Sworn before me this 8th day of February, 1870—GEORGE F. BETTS, United States Commissioner.

When the case was yesterday called by the government, counsel for the defendant asked that it might be laid over for one week in order to give him time to inquire into the circumstances connected with it. He said that he had made no preparation whatever for the defence of his client, in consequence of a great press of business, and again asked as a matter of privilege that the trial be suspended for a short time.

In reply, District Attorney Jackson said there were so many cases of this nature constantly occurring that it became the imperative duty of the government to proceed with this examination. The witnesses for the government were ready with the evidence, and he saw no reason why the trial should not proceed.

The defendant's counsel again objected, but the Commissioner decided that the case must be tried, and proceeded to call the witnesses.

THE TESTIMONY.

Mr. George B. Hayward, an Assistant Assessor of Internal Revenue, testified as follows:—

I know defendant by sight; became first acquainted with him on the 28th of October, 1869; I went to his place of business and asked to examine his books as an internal revenue officer; he said that the books were stowed away down stairs, but that he would have a statement prepared on my return; I went away, and when I again returned a statement was shown to me which I pronounced unsatisfactory and incomplete (statement here produced); I then asked to examine his books; this he refused to allow; said he had made oath to his returns and that should be taken as satisfactory; I then procured a summons from Supervisor Dutcher, but before serving it upon the defendant I again asked to look at his books; he replied that he did not possess any books, a young man in his employ having sold them for old paper; a few minutes after this he contradicted this statement by saying that he had himself sold the books and given the money to his porter; I then served the summons upon him and left; I have since called at Mr. Anderson's place and examined his books; I do not know where they are now; have talked with the defendant; he said, in explanation of his case, that he had met with losses which the entries in his books did not show, and he thought it, therefore, but just to deduct them.

Witness here produced some memoranda in evidence.

The counsel for the defendant was then asked if the books of his client were in his possession.

The counsel replied that he had not as yet seen the books.

At this point the Commissioner adjourned the case, to give time for the production of the books.

The Blatchford Alleged Drawback Frauds.

The papers connected with the indictment of Samuel T. Blatchford for alleged drawback frauds, which were sent to Canada to be used in the Caldwell examination, have been returned, and are now in the office of United States District Attorney Pierrepont. These Custom House cases will come up for trial during the ensuing March term of the United States Circuit Court.

SUPREME COURT—SPECIAL TERM.

The Seward Will Case.

Before Judge Cardozo.

William H. Seward and George M. Grier, Executors of Samuel S. Seward, Deceased, vs. Edwin P. Seward et al.—This was a suit in equity. On the 13th of April, 1848, Samuel S. Seward made his will and died on the 24th of August, 1849. The will and codicil were proved before the Surrogate of Orange county in the following year, the plaintiff William H. Seward being subsequently appointed by Edwin P. Seward and George W. Seward, two of the infant children of the testator, as guardian over the then infant children, to whom legacies had been bequeathed. The complaint sets forth that after the appointment of the plaintiffs as executors they jointly took possession of the property, the plaintiff Grier having the management of the same. It further appears that at the time of the death of the testator Edwin P. Seward and George W. Seward were in indigent circumstances. Demands for money were made upon the executors by the legatees named in the will, the custody of the estate being then in the hands of George M. Grier and Wm. H. Seward, the other executor being absent from Orange county, where the families of the parties interested resided. In the early part of the year 1868 a portion of the children of E. P. Seward cited the plaintiffs to appear before the Surrogate of Orange county to account as executors, but no proceedings were taken. The plaintiffs aver that from time to time they made large advances to the children in question of about $17,000 over and above their just distribution. Mary A. Jayne, and her husband, De Witt Jayne, by virtue of certain assignments from one or more of the defendants, objected to the accounting made by the plaintiffs, on the grounds that the children, during their minority, were not entitled to any funds, their maintenance devolving on their fathers, and any moneys paid them ought not to be chargeable to the estate. It appears that the testator divided a portion of his estate into twenty equal parts, five of them for the children of E. P. Seward, five for the children of George W. Seward and five to be divided among the children who might be born after the execution of the will. Both E. P. Seward and G. W. Seward remarried and had children, and a question arose as to their claims. The complaint further prayed that an action might be taken in a court of equity for a general settlement and that the defendants in the meantime be restrained. Some time since Judge Cardozo restrained the defendants from commencing any legal proceedings, and during the action by the plaintiffs now at issue. Some of the defendants claim that the will justified the payment of the whole income to the living children, and others that their father was responsible for their maintenance and education, and that the executors were not justified in paying out any money belonging to the estate.

The hearing of the case occupied the court the entire of yesterday and was not concluded.

SUPREME COURT—CIRCUIT—PART I.

Action for Rent of Offices.

Before Judge Ingraham.

Jacob Carpenter vs. James J. Morison, impleaded with George W. Markham.—This was an action for rent alleged to be due. The plaintiff and the co-defendant Markham, who was a witness for the plaintiff, swore that in December, 1866, the defendants who were then partners, hired the office No. 9 Nassau street from the 1st day of January to the 1st of May, 1867, from the plaintiff.

The defendant Morison admitted the partnership with Markham, and also the fact that the co-defendants hired desk room, &c., in the plaintiff's office, but denied any agreement to pay rent, and contended that by agreement with the plaintiff the defendants were only to pay the gas and janitor's bills, which they say they paid.

The case was given to the jury on the credibility of the plaintiff Carpenter and his witness, the co-defendant Markham. The jury brought in a verdict for the defendant Morison.

SUPREME COURT—CHAMBERS.

Decisions Rendered.

By Judge Barnard.

Valentine vs. Schultz.—Motion granted and reference ordered to hear and determine.

The People ex rel. Farnum vs. Farnum.—Motion granted.

Jardine vs. The Mayor et al.—Motion granted to hear and determine.

Karst vs. Smith.—Motion granted and reference ordered.

Maurer et al. vs. Grace.—Motion granted and reference ordered.

Gilman vs. Seckendorf.—Motion granted.

In the Matter of Opening Avenue St. Nicholas, &c.—The petitioners are not in this petition entitled to any relief.

Brower vs. The Mayor et al.—Motion granted.

Rowan vs. Sencerborg.—Motion granted and reference ordered.

McMahon vs. Linderman et al.—Motion granted.

Raynor vs. Randall et al.—Motion denied.

Mary D. Loomis vs. Henri B. Loomis.—Report confirmed and judgment of divorce granted.

Maloney et al. vs. Loutrel.—Judgment ordered.

Cornish vs. Jones et al.—Motion granted and reference ordered.

In the Matter of John Foley vs. The Board of Supervisors.—See memoranda, with R. C. Beamish at Chambers.

By Judge Cardozo.

Marvin vs. Hoffman et al.—See memoranda.

MARINE COURT—PART 2.

A Dog Case—Action for False Imprisonment.

Before Judge Gross.

Hutton vs. Daniel Molan.—This was an action brought to recover the sum of $500 for false imprisonment. The defendant, an Italian, some months ago lost a valuable setter dog, which he was very anxious to recover. In his searchings after his lost canine friend he visited, among other similar establishments, the branch "doggery" of the noted fancier, Mr. Butler, in Brooklyn. Here defendant imagined that he discovered the object of his anxious search, in an animal of the same classification as the lost one; but, as after events showed, it was but a counterfeit presentment; and thereby hangs a tail. The defendant kept his knowledge and his diplomacy to himself, and soon struck a bargain for the counterfeit presentment, to pay sixty dollars for the animal on delivery at the Harlem Railway depot. Mr. Butler accordingly despatched the dog by an employé of his establishment, who, when he arrived at the depot, had the dog taken from him by the plaintiff, who claimed it as his lost property. A policeman being attracted to the scene which ensued arrested the plaintiff, who was kept in durance vile for two days and then brought before Justice Dodge, at the Jefferson Market Police Court. In the meantime the defendant found, on closer inspection, that he had got the wrong dog by the ear, and, of course, there was no complaint as against Mr. Butler's man. The latter—the plaintiff—now sues for $500 compensation for false arrest and imprisonment.

The above statement of facts having been sworn to Judge Gross submitted the case to the jury after a very clear exposition of the law relating to false imprisonment and malicious prosecutions. The jury, after a short absence, returned a verdict for the plaintiff; damages ten dollars.

COURT OF GENERAL SESSIONS.

Before Recorder Hackett.

SENTENCES.

The first prisoner disposed of yesterday was David Reed, who pleaded guilty to an attempt at burglary in the third degree. On the night of the 26th of January the liquor store of Richard Ternan, 99 Fulton street, was burglariously entered and some cigars taken. He was sent to the State Prison for two years and six months.

FELONIOUS ASSAULT BY A CHINAMAN ON A LITTLE BOY.

Antonio Corn, a Chinaman, was convicted of an assault with a dangerous weapon and recommended to mercy. It appeared that the prisoner kept a cigar stand in the street and the boys were in the habit of stealing from him. On the 15th of January three boys stole cigars from him, and in pursuing them he drew a small knife and stabbed a little boy named James Moore, who was not engaged in the theft. The Recorder sentenced Corn to the State Prison for three years, observing that had the jury not recommended him to mercy he would have sent him to the State Prison for five years, in order to show the community that the reckless use of weapons must be stopped.

ALLEGED ROBBERY.

James Russell was placed on trial charged with being implicated with two men in robbing Paul Trigoli, on the night of the 24th of December, of an accordeon valued at $50. The defence proved that the accused was a young man of excellent character and that he was spending the evening with a respectable family at the time the robbery was committed. The jury rendered a verdict of not guilty, without leaving their seats.

GRAND LARCENY.

Michael Hennessy was acquitted of a charge of grand larceny. Peter Van Buren was in a drinking saloon on the 15th of January, and when Hennessy asked him for the loan of a dollar he handed him a fifty dollar bill, which Hennessy gave to Peter Cain to go and get changed. Cain did not return; but as there was no felonious intent shown, and as Hennessy proved an excellent character, the jury rendered a verdict of not guilty.

Peter Cain pleaded guilty to an attempt at grand larceny, he having been jointly indicted with Hennessy. That being his first offence and other mitigating circumstances having been shown the court, the Recorder sent him to the Penitentiary for six months.

Thomas Foley and Francis Blanto pleaded guilty to petty larceny, they having been indicted for stealing a quantity of tobacco on the 18th of January from Joseph Baron. They were sent to the Penitentiary for six months.

Herman Cordes, who was charged with burglariously entering the saloon of Louis Smith, No. 449 Sixth avenue, on the 21st of January, and stealing a box of billiard balls, was convicted of grand larceny and recommended to mercy. He was sent to the State Prison for one year.

COURT CALENDARS—THIS DAY.

OYER AND TERMINER AND SUPREME COURT—CIRCUIT—Part 1.—Nos. 487, 1465, 1805, 1807, 2119, 1831, 1877, 1897, 1767, 1641, 1949, 6507, 4247, 1889½, 1907½, 1913, 1919, 881, 1921. Circuit—Part 2.—Nos. 948, 38, 1198, 1596, 1608, 244, 1488, 498, 1546, 34, 336, 1194, 234½, 1120, 1566, 932, 62, 1590,484, 1602. Circuit—Part 3—Demurrers.—Nos. 29, 20. Law and fact—Nos. 58, 252, 260, 236, 68, 125, 186, 192, 205, 247, 248, 264, 61, 62, 109, 180, 172, 181, 221, 267, 274.

SUPREME COURT—CHAMBERS.—Nos. 130, 179, 180, 181, 194, 227, 239, 255. Call 301.

SUPERIOR COURT—TRIAL TERM—Part 1.—Nos. 33, 1335, 1151, 803, 133, 132, 1317, 1105, 1319, 1323, 1337, 1339, 1341, 1343, 1345. Part 2—Nos. 2056, 1508, 1358, 1108, 1802, 1010, 1896, 2048, 2086, 2088, 2090, 2094, 2096, 2098, 2100.

COMMON PLEAS—TRIAL TERM—Part 1.—Nos. 477, 383, 714, 660, 340, 171, 1701, 746, 747, 748, 749, 750, 751, 752, 753. Part 2—Nos. 560, 304, 481, 754, 755, 757, 758, 760, 761, 762, 763, 764, 765, 766, 768.

MARINE COURT—TRIAL TERM—Part 1.—Nos. 4697, 246, 4466, 4795, 65, 135, 164, 179, 223, 253, 267, 345, 352, 357. Part 2—Nos. 146, 249, 4330, 95, 230, 4522, 4109, 193, 197, 291, 295.

BROOKLYN COURTS.

UNITED STATES COMMISSIONERS' COURT.

Alleged Post Office Frauds.

Before Commissioner Jones.

United States vs. George Judson.—The hearing of this case, in which the defendant is accused of having robbed the government while cashier of the Post Office, was to have been resumed yesterday, but, as counsel for the defence was engaged elsewhere, it was postponed until to-day at one o'clock.

SUPREME COURT—GENERAL TERM.

Before Judges Barnard, Gilbert, Tappen and Pratt.

A general term was opened yesterday and will continue during the week. The non-enumerated calendar contains twenty cases and the enumerated 112 motions. Decisions will probably be rendered on Friday.

CITY COURT.

Action Against United States Marshal Dallon.

Before Judge Thompson.

Jane Heatherstone vs. Patrick Dowling and Francis L. Dallon, United States Marshal.—The plaintiff in this case, which has already been reported in the HERALD, brought suit to recover damages in the sum of $5,000 for the alleged illegal seizure of her store in Jersey City. The defendant Dowling made the seizure under a bankruptcy warrant and by order of the Marshal. The jury found for defendants.

COURT OF SESSIONS.

Alleged Seduction.

Before Judge Troy and Justices Voorhees and Johnson.

Victor Vanderveer was placed on trial yesterday afternoon, under an indictment charging him with seduction under promise of marriage, the complaining witness being Maria Kossleyn, a handsome young woman, apparently about twenty-three years of age. The testimony of Miss Kossleyn showed that in the summer of 1868 she was employed as housekeeper by the defendant, at his residence in Classon avenue, and that while acting in that capacity she yielded to his wishes and became the mother of twins. She claimed that she was of previous chaste character, and produced several witnesses who swore to this as a fact.

The defence is that the young woman was not of chaste character previous to the alleged seduction. The Court adjourned before witnesses were examined for the defendant.

OBITUARY.

Joseph Wesley Harper.

Not many months have passed since, with unfeigned regret, we were called upon to record the death of Mr. James Harper, the oldest brother and head of the firm of Harper & Brothers. To-day, with equal sorrow, we announce the death of Joseph Wesley Harper, which sad event occurred early yesterday morning, at the residence of the late publisher in Brooklyn. He was in the sixty-ninth year of his age, having been born in Newtown, L. I., in 1801.

The father of the brothers Harper was a substantial and respectable farmer of Long Island. He apprenticed his sons James and John to a printer, and after they had served their apprenticeship and entered into business on their own account he placed his remaining sons, Wesley and Fletcher, with the young men. Early in the century the firm, which now stands second to none in the United States, was founded. In 1822 the subject of this sketch was admitted to partnership. From the start he displayed great business capacity. His literary taste was pure and elevated, all the books selected by him for publication meeting, it is said, with marked success. And not only in choice of literature did he contribute to the advancement of his firm. When he became a partner the establishment was by no means what it now is. At one time he performed the duties of foreman of the composing room, and we believe that he it was whose cool courage and determination prevented what threatened to be a most disastrous loss to the house. As the story goes, there was a large amount of work on hand to be published within a specified time. Some book, or books, in fact, were to be got out hastily, to anticipate a rival publisher. At this important moment a majority of the printers, incited by a couple of discontented spirits, struck, and notified Mr. Wesley Harper that they would not resume work unless he agreed to certain conditions laid down by them. He promptly refused, and planting himself at the door of the composing room remonstrated with them at their conduct.

"Will you not go back to work?" asked Mr. Harper mildly.

"See you d——d first, and then I won't," returned one of the leaders.

The next moment the irate typo was knocked down, picked up again and hurled out of the room. The second ringleader advanced with belligerent intentions and abusive language. He quickly shared the fate of his colleague. After getting rid of these troublesome spirits Mr. Harper conversed amicably with the men, put them in good humor and ended by compromising the matter in a manner agreeable to all parties. Such is the story as we find it in a newspaper paragraph. It is doubtful if many other men would have acted so summarily, but it proved the only effective method of preventing serious loss to the firm. But although, as appears from the foregoing, Mr. Harper would never succumb to threatening demands, he was always a considerate and generous foreman. In his intercourse with printers he met some disreputable characters on whom kindness would have been utterly lost. But excepting these he always referred to his career as head of the composing room as being most pleasant. While maintaining the strictest discipline he succeeded in winning the friendship of all whose good opinion was worth having.

At a later period than that referred to above he took the position of proofreader, but did not hold it a very long while. The firm had by this time increased its business greatly and had already achieved an enviable reputation throughout the United States. On Mr. Wesley Harper devolved all the literary work of the establishment. Although he had not enjoyed the advantages of a collegiate education his reading was extensive and varied. He had cultivated a close acquaintance with English literature and was conversant with all of Continental literature that was of service to his business. His style of writing was finished, though simple and unaffected. Many of the prefaces in the works comprising the old family library were written by him and are noteworthy for their compactness of expression. Mr. Harper, however, did not write often at any time and as years passed on he wrote less and less. A large number of the works submitted to the firm for publication were read by him, and his critical judgment was always found correct. To his credit be it said that neither prejudices for or against an author determined his decision. Every manuscript read by him was weighed according to its merits, and the rigid impartiality with which he acted, added to the soundness of his judgment, naturally enabled him to exercise a preponderating influence in the choice of books published by his house. For many years he was the real conductor of *Harper's Magazine*, but few articles appearing that had not been examined and approved by him. Mr. Harper also conducted the literary correspondence of the firm until his eldest son was admitted to the business, when he transferred this arduous duty to him. His letters to authors were always worded in a spirit of kindness that charmed the reader. To the unfortunate writer whose book had been declined he even extended hearty sympathy, and did not fail, if the production exhibited marks of ability, to encourage him to persevere.

Except as a publisher and literary gentleman Mr. Wesley Harper was not known to the public. Indeed, his elder brother, the late James Harper, was and has been the only member of the firm that ever received the suffrages of his fellow citizens, and even then the office was not sought after. Aside from his business character, there was much in Mr. Harper's private life to admire. Personally he was modest to shyness. Quiet, unassuming, a model of gentlemanly courtesy, and ever mindful of the feelings of others, he was never known to utter language to others that could aggrieve or wound. He belonged to what is called the "old school" of gentlemen. His suavity of manners and thoughtful consideration for others endeared him to all the employés of Harper & Brothers, as well as to his immediate relatives. To those in trouble he ever lent a ready ear and was willing to aid the poor and unfortunate with his money and with personal attention, if this last was needed. He took a warm interest in the welfare and comfort of his subordinates, to whom he was always accessible, and who found in him a ready friend and adviser.

For some years Mr. Harper had been suffering from the disease which has ended his earthly career of usefulness. The physical sufferings that embitter some men's temper were endured by him with a calm and serene resignation. He had been, during the greater part of his life, a prominent member and officer of the Sands street Methodist church, in Brooklyn, and was noted for his sincere devotion to the tenets of Christianity. Strong in his faith of a future full of light and love in a better world above he met death undismayed. The death of his brother James was a severe blow to him, and it doubtless hastened the close of his own life. He is said to have remarked that he would be the next one to go, and as he had made preparations to leave the summons did not surprise him. Ever since Christmas he had been confined to his room. During these weeks of suffering his cheerfulness and genial temper never forsook him. His last moments were worthy of his life and of the Christianity he professed. When he felt that his end was approaching he summoned his family, the old servants of his firm and his friends, and bade them a tender and touching farewell. Full of faith and of hope he passed away, leaving behind him the fame of a good man and a Christian, to enjoy with his Saviour the felicity of heaven.

Jacob Tiel.

A telegram from Philadelphia reports that Jacob Tiel, a soldier of the war of 1812, aged seventy-seven years, was found dead in his bed, in that city, yesterday. He participated in the battle of Bladensburg, and was a witness of the burning of Washington by the British.

Thomas Mandell.

This gentleman, a prominent merchant of New Bedford, Mass., died yesterday, aged seventy-eight years. He was prominently before the public at one time as one of the executors in the Howland will, which became famous in the law courts.

DEATH AFTER SICKNESS OF THIRTY YEARS.—The Easton (Md.) *Gazette* states that Mrs. Louisa Melvin, the widow of Captain Melvin, formerly of the United States Navy, died at Royal Oak, in that county, last week. This lady had been an invalid for over thirty years, for twenty-five of which, at least, she was completely bedridden.

TERRIFIC EXPLOSION.

Bursting of a Boiler in West Thirty-third Street—Miraculous Escape of the Operatives—An Exciting Scene—Three Persons Injured—A Brave Engineer.

A terrific explosion occurred yesterday afternoon in Decker's paper hanging factory, Nos. 515 and 517 West Thirty-third street, which for a time created quite a commotion in the neighborhood, and which would have probably resulted in great loss of life had it not been for the fact that all the operators were at dinner when the accident took place.

It appears that about a quarter to one o'clock Mr. Wright, bookkeeper in the establishment, happened to go into the engine room during the absence of the engineer, who had gone to dinner, and noticed that the boiler was leaking badly from several cracks under some of the bolts. Anticipating that an explosion might occur he remained in the place until the engineer, John Donnelly, returned, when he informed him of his discovery. Donnelly at once saw the danger and began to draw the fires, but before he had completed his task the boiler exploded with terrible force, the concussion blowing him a distance of several rods into the adjoining yard.

A HIGH OLD BOILER.

The engine room of the factory was a simple shed, in the rear of the main building, and when the explosion occurred the engine, which was a horizontal one, shot through the roof of the structure and into the air at least 100 feet above the highest houses in the neighborhood. In its descent it struck the roof of the three story building Nos. 519, 521 and 523, immediately adjoining the paper hanging factory, and crashed through to the ground floor, crushing to atoms every timber it came in contact with.

A BIG FIRE.

At the same moment that Donnelly was blown into the yard the force of the explosion dashed the the fire from the furnaces through the entire length of the ground floor of the factory, the strength of the concussion carrying with it all the doors which divided the shed from the factory itself. The consequence was that in a second the whole establishment was wrapped in a sheet of flame, and before the engines had time to arrive at the scene every floor of the establishment was caught up by the devouring element.

When the engines did arrive the flames were raging furiously. The engineer, Donnelly, had in the meantime been rescued by a police officer from his dangerous position in the yard, as were Mr. Wright, the bookkeeper, and a workman named George Hussey, they being the only persons who were unfortunate enough to be in the engine room when the boiler exploded. Several streams of water were at once thrown upon the fire as soon as the firemen could get well to work, but for a time their efforts proved unavailing, and it seemed as though the flames were destined to stretch over the whole block. Finding it utterly impossible to confine them to the building in which the fire had originated, the men endeavored to stem the progress of the conflagration by "playing" upon the adjoining buildings, but all to no purpose, for in a few minutes the floors of the paper factory began to fall in with a terrific crash, and the flames extended to the packing box factory, No. 513, which they soon completely enveloped.

AN EXCITING SCENE.

The excitement in the neighborhood at this time was very great. Men, women and children, almost all friends or relatives of persons working in the factories, rushed pell mell through the street and endeavored to get near the burning buildings; at times struggling fiercely with the police to enter the "lines" and calling upon everybody they came in contact with to know something of the fate of those whom they supposed to have been working in the factories when the fire broke out. Captain Caffrey, who was present, manifested his usual coolness and tact on the occasion, and managed at the same time to quiet the fears of the anxious relatives of the operatives, and to keep them from exposing themselves needlessly near the buildings. Indeed, had it not been for the energetic efforts of himself and officers when the intelligence of the accident was first hinted about in the vicinity there might have been a serious loss of life from the impetuosity of the hundreds who demanded admission within the fire lines.

WHAT MIGHT HAVE BEEN.

Over ten hours elapsed before the flames were completely extinguished, and it was not until then, when all the operatives had put in an appearance, that their friends became satisfied that they had not been lost in the conflagration. There were two very fortunate circumstances that prevented the explosion from becoming a very disastrous accident. The first, which has already been mentioned, was that all the operatives were at dinner when the boiler burst, and the second was that when the boiler fell it struck a part of the building No. 519, which was used for the machinery and boilers of the packing box factory, without exploding another boiler which was located in it. This portion of the building was a sort of house in itself of the same height as the main building, but divided from it by a brick wall. The boiler, which exploded, in its descent through this brick enclosure, actually struck the tubular boiler, which was used for the working of the machinery of the packing box establishment, and knocked off several of the steam pipes. Had the tubular boiler been so struck as to have been exploded the loss of life that would have ensued (as there was at the time some eighteen persons working on the third floor of the building) would have been appalling.

TWO INTREPID POLICEMEN.

Quite an excitement was occasioned during the fire by the rumor that on the third floor of the packing box factory a woman, a member of the family of Thomas Williamson, one of the proprietors had been forced back into her room by the smoke and was unable to escape. Two police officers at once volunteered to seek for her, and after much personal risk reached the room, but found that all the family had escaped.

It is stated that the boiler only had fifty pounds head of steam on when it exploded, and that its maximum rate was sixty pounds.

A BRAVE ENGINEER.

Donnelly, the engineer, was dreadfully scalded about the head, arms and face. He was taken to his home after the accident and refused to go to the hospital. His courage, manifested in "drawing" the fires at the risk of his life in order to prevent the accident which he foresaw, is deserving of the highest praise, and his employers will doubtless reward him for it.

THE DAMAGES.

The other two men who were injured, Wright and Hussey, were not very seriously injured. They were taken to their homes by the police.

The building No. 516 and 517 was totally destroyed with all its contents. The stock was insured for $7,000 in the Merchants' Insurance Company. The building was owned by George W. Chapman, and was fully insured. The third floor of No. 513 was occupied by Thomas Williamson as a hosiery establishment. The stock was insured for $4,000 in the Firemen's Company, of Hartford, Conn. The first and second floors were unoccupied. The fourth floor was occupied by Mr. Fitzsimmons as a shirt furnishing factory, who lost heavily in stock. A portion of this floor was occupied as a dwelling by Mr. Fitzsimmons. His entire furniture was destroyed. The building belonged to Mr. Pearson, and was damaged about $5,000. Nos. 519 and 523 were insured for $25,000.

STARVED TO DEATH.

How a Man Lived Five Days on One Pound of Crackers—Then Died.

People will readily believe that destitution exists in this city, often to the extremest degrees, but few will credit the statement that there are many in the heart of this populous and philanthropic metropolis who every winter perish from actual starvation. In the regions of Water and Cherry streets and in the heart of the Sixth ward thousands now tenant damp, filthy and lousy cellars, unfit for habitation by the lowest hogs. One by one these people sink into nameless graves, and after a brief interval their places are filled by others. Thus these vile holes, which for humanity's sake should be instantly closed to human occupancy forever, become the established channels by which poor, sick and suffering men, who yet have something to live for, pass into forgetfulness. That some action is demanded no one who reads the following case, discovered by the sanitary inspectors, can deny. Where are those missions whose office it is to perform acts of charity? They implore the congregations of the city. They tell of their marvellous works; but how is it that a citizen, under their very noses, suffers and finally dies from want of food? How is it, also, with the officials—the Commissioners of Charities and Correction? Their attention is invited to the following:—On the evening of Saturday, February 5, Inspectors Post and Ely, of the Board of Health, in searching for relapsing fever accidentally heard of a man who was lingering in extreme destitution at No. 410 Water street. They sought these premises and descended to the basement by a pair of dilapidated stairs. Once upon the landing of a dark, dreary and filthy hovel they rapped for admittance. There was no response. They rapped again and again, and yet all was stillness. For a quarter of an hour they kept up their endeavor to gain the interior, but without avail. Finally they used violence, and burst the door open, and stood "deep into the darkness peering." They groped about blindly in search of the victim. They could not find him, and were about to give it up, when Dr. Ely stumbled against something which turned out to be the form of a man prostrated by starvation, and suffering at the same time from pneumonia. There was no furniture in the room—no comforts, no necessaries of existence; not even light was there; hardly life, but the clear shadows of inhuman death! The apartment was small and was worse than the foulest sewer. The ceiling was several feet below the level of the sidewalk, and the floor was covered by stagnant water, emitting foul vapors. In such a place as this the poor, unfortunate man, going on towards sixty years of age, had lived for five days, slowly dying for want of nourishment. He subsisted during that time upon one pound of butter crackers and was utterly unattended and uncared for. Inspectors Post and Ely secured his removal to Bellevue Hospital and the end was next day death.

MUNICIPAL AFFAIRS.

THE COMMON COUNCIL CONCLAVES.

Interesting Proceedings in the Board of Aldermen—An Independent Miller "Kicking"—Guntzer Ousted from His Place—Paving and Other Matters of Minor Import.

The Board of Aldermen assembled yesterday afternoon, pursuant to adjournment, with the president, Alderman Coman, in the chair. The members were all present save Alderman Scannell, and the lobby was crowded almost to suffocation. The faces in the lobby were so Teutonic and so comic that if a costumer could reproduce them in pasteboard he would certainly make his fortune by selling caricatures of human physiognomy. When the usual preliminaries had been disposed of the papers encumbering the president's desk were taken up and either "laid over" or "referred" as was most appropriate. Among the

PAPERS INTRODUCED

were resolutions permitting Isaac Lockwood to regulate and grade 124th street, from First avenue to Harlem river, directing the paving of Fifth avenue with granite pavement similar to that now on Broadway and known as the Guidet pavement, and the paving with Faul National pavement 114th street, from First avenue to avenue A; 124th street, from Third to Fifth avenues; Eighty-fifth street, from Second to Fifth avenue, and 111th street, from Third to Fourth avenue.

The Committee on Protests, through Alderman Miller, asked to be discharged from the further consideration of the

PROTEST OF SEGER AGAINST GUNTZER,

offering at the same time the report of the committee. Almost all the eyes in the lobby were now strained to the utmost, the Teutonic necks were bent forward, and all the other accompaniments of strict attention were given. The deputy clerk had just entered upon the reading of the report, when Alderman Miller, who with some good show is aiming to be a leader, rose and moved to have the report laid on the table and the Board take a recess for half an hour.

Now, Miller has grown to be a power in the Board and his motion was respected.

AFTER RECESS

it was noticed that the good and intelligent looking Alderman Guntzer was not present. The crowd in the halls had swelled considerably during the recess, and when the doors were opened it required all the strength, patience and perseverance of the representative of the Smith family to keep the crowd from flooding the chamber through the private door. When the public door was opened the "gang" Teutonic pushed and pulled and fought their way into the lobby in the most boistrous style, and in a few seconds the benches in the lobby as well as the space inside the railing and behind the aldermanic chairs were crowded. Among the crowd within the sacred precincts, among others, was the erudite, eloquent and elegant legislator from the Thirteenth ward, who has contracted a severe cold from keeping his coat open to show the massive gold chain which his admirers presented him with. Then there was Deputy Sheriff Dempsey, with his good natured face covered with blushes that would do credit to a full blown peach, and McGowan, from Judge Bixby's court, in a span new overcoat, and Tyler Kelly, who has been paving the way for Mr. Seger through the bloodless battle for aldermanic honors. In the lobby, among the indescribable crowd, were Canvasser Ginger, whose eyesight was so bad he could not distinguish any erasures or alterations in the official returns. The immaculate (!) Lane was not present. His charming countenance, canary kids and brilliant and business-like air (!) were missing. His "steerer" was present, however, and that was quite enough.

When the President had called "to order" Alderman MILLER arose and moved to take from the table the

REPORT OF THE COMMITTEE ON PROTESTS

in relation to the Seger-Guntzer case, and that the report be read by the Clerk. The motion was adopted. The Deputy Clerk, Mr. Twomey, arose, and after giving the manuscript report a regular stage jerk, and "hem"-ing once or twice, proceeded to read the report of the committee. The report was full, lengthy and explicit. Before Mr. Twomey got through he was obliged to "take water" two or three times, either on account of the tough character of the report or his own rapidly increasing adiposity.

The report dilated on the necessity of preserving the purity of the ballot box and interpreting fully and fairly the will of the people in the choice of officers; deprecated the appointment of election officers who have bad eyesight and cannot see alterations that are plain to anybody else; affirming that the system of government would soon be subverted if tricks and frauds plain as those which were perpetrated in the instance before them were allowed to go unnoticed, and wound up by giving it as the opinion of the committee that Mr. Seger was justly entitled to the seat in the Board now held by Mr. Guntzer and including a resolution awarding the seat now held by Mr. Guntzer to Mr. Seger.

During the reading of the report there was a peculiar "hush." The crowd in the lobby was very quiet, and when the resolution was read and adopted by a vote of 17 to 2 the silence maintained by all present was almost painful. If there be any truth in the saying, "Silence gives consent," then all who were present must have agreed with the verdict, for there was a silence pervading the whole scene which was most intense.

Shortly after the adoption of the resolution the list of

GENERAL ORDERS

was taken up. The Croton Aqueduct Department was directed to contract for the paving of Fourth and Fifth streets, from Bowery to Stanton street, with wooden pavement. Resolutions were also also adopted directing the paving, with Belgian pavement, of Charlton street, from McDougal to West street; Sullivan street, from Houston to Canal; Prince street, from Bowery to Charlton street; Eldridge street, from Division to Houston; Ludlow street, from Canal to Stanton; to grant donations to pay assessments to St. Joseph's Home for Aged Females, Church of the Holy Communion, Lady of Sorrows, University of the city, the German Evangelical Lutheran Emanuel Association and the Lexington avenue Methodist Episcopal church.

Alderman CULKIN called up the resolution to grant to the auctioneer the same fees for 1868 as are paid for similar service in 1869. It did not appear who the auctioneer was that was to benefit by this arrangement, but Alderman Miller "kicked" again and had the matter referred to the Finance Committee. The resolution in regard to taking off one half of the sidewalk on the northerly side of Fulton street was, on motion of Alderman Long, referred to the Committee on Streets.

A large amount in the way of regulating, curbing, guttering, lighting and such like work was ordered, after which the Board, on motion, adjourned until Monday next, at two P. M.

BOARD OF ASSISTANT ALDERMEN.

The Board met yesterday afternoon, the president, Mr. Reilly, presiding.

A resolution was adopted directing the Street Commissioner to report to the Board by what authority the Knickerbocker Ice Company are widening pier No. 49, at the foot of Leroy street, North river.

The tax levy was received from the Comptroller, and on motion it was referred to that officer, with power to send it to the Legislature.

The Board then adjourned till Thursday.

THE HARLEM DEPOT TRAGEDY.

The Killing of Mr. Peyser—Censure of the Harlem Railroad Company.

Coroner Keenan yesterday concluded the inquisition previously commenced in the case of Mr. Morris M. Peyser, the Boston merchant, who was crushed to death at the Harlem Railroad depot, the particulars of which have heretofore been published in the HERALD. Two other witnesses in relation to the accident were examined; but their evidence revealed nothing of special importance. Wooster Beach, M. D., who made a post-mortem examination on the body of Mr. Peyser, deposed to finding the ribs on the left side crushed in and badly fractured, in his opinion the result of some violence.

The case was then submitted to the jury, who, after a protracted deliberation, rendered the following verdict:—

"That the deceased came to his death by being crushed between a car and the gate of the yard attached to the Harlem Railroad depot on the 2d day of February, 1870; and they censure the Harlem Railroad Company for neglecting to warn the deceased of danger when said car was driven into the said depot.