THE COURTS.

Violations of the Internal Revenue Law—An Old Will Case on Trial—Decisions—Business in the General Sessions.

UNITED STATES COMMISSIONERS' COURT.

Counterfeit Revenue Stamps.

Before Commissioner Shields.

The United States vs. Christopher Hogan.—The defendant, who had been indicted in Ohio on a charge of procuring to be engraved plates for printing counterfeit internal revenue stamps, was held yesterday by Commissioner Shields to await an order of removal from Judge Blatchford.

Discharged.

Marc Lenas, the cigar dealer in Fourth avenue who was charged before Commissioner Shields with having, in violation of the internal revenue laws, refilled boxes with cigars, has been discharged by consent of the District Attorney, the evidence failing to the removal charge.

COURT OF OYER AND TERMINER.

Plea of Manslaughter in the First Degree and Sentenced Ten Years to State Prison.

Before Judge Cardozo.

This Court met yesterday morning pursuant to adjournment. The only case disposed of was that of Frank Wilson, indicted for murder in the first degree for killing, on the 23d of last March, John Brown, at 29 Cherry street. Both parties, it will be remembered, were fellow shipmates, and on the day of the homicide had been drinking freely together with another sailor at various drinking places in the Fourth ward, until they fetched up at No. 29 Cherry street. Here they got into an altercation, when the deceased, as appeared by the affidavits presented and read, struck the prisoner a violent blow, after which the latter went out and was gone some fifteen minutes, when he returned, and, drawing a knife, rushed upon the deceased and stabbed him through the heart, killing him instantly. On his arraignment for trial he entered a plea of not guilty, and his trial was set down for yesterday.

Mr. Algernon S. Sullivan, Assistant District Attorney, said he was ready to go on with the trial.

Mr. W. F. Kintzing, counsel for the prisoner, said that on consultation with his client and the District Attorney he wished to withdraw the plea of not guilty and put in a plea of manslaughter in the first degree.

Mr. Sullivan said he would accept the latter plea.

Mr. Kintzing read some extenuating affidavits, and contended that the facts of the homicide showed that the deceased was the first assailants that they had been friendly up to this time, and that the prisoner had always borne a good character. The Judge stated that he felt it his duty to give proper consideration to the extenuating circumstances as unfolded in the affidavits and statements of the prisoner's counsel, and therefore sentenced him for ten years to State Prison.

There being no other case ready the Court adjourned till this morning.

SUPREME COURT—TRIAL TERM.

New Trial of an Old Will Case.

Before Judge Van Brunt.

John S. McKinley vs. Isabella Lamb, James D. McKinley and Sarah McKinley.—This is an action to set aside a will as fraudulent, the testator, as alleged, being of unsound mind and not of sufficient testamentary capacity to make a will, and the same not being properly executed. The will in question, the validity of which is in controversy, was that of John S. McKinley, who died January 2?, 1868, in this city, in the eighty-ninth year of his age. During the last three years of his life the deceased shared his home with the children of a deceased nephew and their mother, and the evidence was that he told various parties that he would never leave his nephew, John S. McKinley, sole executor and legatee under the alleged will and plaintiff in the action, any of his property. The Surrogate refused to admit the will to probate. An appeal from this decision was made to the General Term, who ordered the case to be tried before a jury, the issues of fact being whether the present will was signed by John S. McKinley, deceased, whether it was witnessed in his presence, and whether he declared the same to be his last will and testament. The amount of property involved is some forty thousand dollars. Considerable testimony was taken. For appellants, T. E. Tomlinson; for respondents, Cheney & Dixon and E. H. Anderson.

SUPREME COURT—CHAMBERS.

Decision.

By Judge Ingraham.

George D. Schmid vs. Charles Kircher et al.—Motion granted.

COURT OF COMMON PLEAS—SPECIAL TERM.

Decisions.

By Judge Larremore.

Bootner vs. Brown.—Application denied.

Carpenter vs. Carpenter.—Reference ordered to take proof and report as to the amount of alimony.

Morgan vs. Fiske.—Reference ordered.

The Urbana Wine Company vs. Baker.—Motion granted, with leave to defendant to serve amended answer within ten days, on payment of costs.

Howe vs. Berry.—Motion denied without prejudice. Costs to abide event.

Fitzpatrick vs. The Mayor, &c.—See opinion.

Jarvis vs. Pike.—Same.

Lauterbach vs. Carroll.—There should be an order to show cause, with temporary injunction.

Hudson vs. Mudgett et al.—Judgment for plaintiff.

Notice to the Bar.

Chambers will not be held on Saturday during the months of July, August and September. All motions and orders returnable on such days will stand over until the ensuing Monday.

By the Court.

NATHANIEL JARVIS, Jr., Clerk.

COURT OF GENERAL SESSIONS.

A Missouri Merchant Convicted of Swindling.

Before Recorder Hackett.

The whole of yesterday was occupied in the trial of George H. Smith, formerly an extensive wholesale liquor dealer in Kansas City, Mo., charged with obtaining goods by false pretences. There were several charges against him, but Colonel Fellows tried the defendant upon a complaint made by Tiffany & Co. N. R. Squire, a salesman in that establishment, testified that on the 17th of February the prisoner entered the store, represented himself as James B. Smith, of the firm of Jewett, Smith & Allen, of Kansas City, Mo.; that he was going to be married and wished to buy some jewelry. He purchased a pair of diamond earrings, a diamond cluster ring, a diamond cross and seal, a gold watch and chain and a plain gold ring, amounting in all to $1,006. He referred to M. R. Cook & Co., 67 New street. Tiffany & Co.'s collector made inquiry and they sent back word that he was responsible for $1,000. The prisoner took the goods and requested the clerk to draw upon him on the German Savings Bank, Kansas City, for thirty days, giving him five days' notice to provide funds for its payment.

District Attorney Fellows was so anxious to convict this alleged swindler that when Smith was acquitted last week upon a technicality he sent to Kansas City for a member of the firm of Jewett, Smith & Allen, who arrived in New York yesterday morning.

Josiah F. Allen said he was a member of the firm of Jewett, Smith & Allen, Kansas City, Mo., and that the prisoner never was a member of the firm and had no authority to transact business for them; they were in the wholesale liquor business, and had purchased liquors from the prisoner when he was a liquor merchant in Kansas City, doing business under the firm name of George H. Smith & Co. In reply to the counsel for the prisoner Mr. Allen said that he could not positively swear that there was not a firm of Jewett, Smith & Allen in West Kansas City (which was not a separate municipality), but added that in an active business experience of three years he never heard of a firm of the same name as their own.

Martin R. Cook testified that Mr. Damon, Tiffany's collector, called to make inquiry about the responsibility of Mr. Smith, and was of the impression that he said James B. Smith. Upon the cross-examination the witness said that some days before this inquiry was made the prisoner called at his store and proposed to buy some goods, and procured a loan of $10, for which he gave a draft, which was subsequently redeemed by him.

Jacob R. Tyson, a wine dealer, testified that in the middle of February the prisoner called and said that he had gone into the firm of Jewett, Smith & Allen, of Kansas City, Mo., and wanted to buy goods; he procured a loan of $100, and signed a draft on Jewett, Smith & Allen; it was sent to Kansas City and came back dishonored.

Andrew V. Irmy, who keeps a furnishing store, stated that he sold the prisoner goods, for which he gave a draft upon the German Savings Bank, Kansas City, signed by George H. Smith, which came back protested.

Officer Rockwell, who arrested the prisoner, testified that he found the diamond ring produced in Smith's boot and the pawn ticket shown he discovered in his cell.

THE PRISONER'S STATEMENT.

This closed the case for the people, and George H. Smith, the accused, went on the stand and told a long story, showing more than ordinary shrewdness and intelligence. He said he gave to Mr. Squires the name of George H. Smith, of the firm of Jewett, Smith and Allen, of Kansas City, and stated the conversation he had with Mr. Cook relative to the purchase of a large quantity of whiskey. Mr. Fellows put Smith through a searching cross-examination relative to his firm. He admitted that he was arrested in Kansas City upon a charge of defrauding the government, and subsequently in Chicago. He read a letter purporting to come from Allen, his partner, in reply to a communication sent by him telling Allen that he was in trouble in New York, but in answer to the Recorder he said he did not save the envelope.

William E. Thompson swore that he formerly resided in Kansas City; that he bought liquors from the prisoner and received receipts signed by Jewett, Smith & Allen last November.

Julius E. Levy, formerly connected with the First National Bank in Kansas City, testified that the prisoner, while a member of the firm of George H. Smith & Co., made deposits in that bank, but his credit was not good; the witness never knew of more than one firm of Jewett, Smith & Allen in Kansas City. The defence then called a man from the Tombs, who is in custody under the name of Lovell and gave his name as William Brown. He said that he became acquainted with Smith a year ago in Junction City, Mo.; was engaged in the retail liquor business there, and purchased liquors of him in November, 1870, and received a receipt signed Jewett, Smith & Allen. The witness went on to state that he had a conversation with Smith's partners, Jewett & Allen, when Mr. Josiah F. Allen was told to stand up. Immediately Brown said, "This is one of the gentlemen." Loud laughter was heard in the court room, and Brown corrected himself by saying, "Or a man that resembles him very much." The significance of this testimony will be seen when it is stated that Brown was confined in the same cell with Smith.

Mr. Allen was recalled by Mr. Fellows, and testified that Smith's reputation for business honesty was not good.

District Attorney Fellows, in a powerful argument to the jury, claimed that the prisoner was one of the shrewdest and most accomplished swindlers that ever depredated upon New York merchants, and commented in sarcastic terms upon the audacious perjury committed by Smith and Brown in manufacturing the story that there was a new firm styled Jewett, Smith & Allen in Kansas City, in the liquor business. The receipts given by Smith a short time before he left Kansas City, in the name of the well established and responsible firm of Jewett, Smith & Allen, in that place, was the commencement of an ingenious plot to swindle the merchants of this city.

THE SENTENCE.

The Recorder delivered a brief but clear charge, and the jury, at a late hour last evening, rendered a verdict of guilty without leaving their seats. His Honor sentenced him to the State Prison for three years and ordered him to pay a fine of $3,288, that being three times the amount he swindled Tiffany & Co. out of.

It is said that Smith is a fine linguist and he has the reputation of being the most accomplished swindler in the country.

LARCENIES.

Thomas Barnard pleaded guilty to an attempt at grand larceny, he having been caught in the act of stealing, on the 7th instant, $60 from Ferdinand Marshalk. He was sent to the State Prison for two years and six months.

Charles Collins, who was charged with stealing a gold watch, valued at $100, from Michael M. Van Buren, pleaded guilty to grand larceny. He was remanded for sentence.

COURT CALENDARS—THIS DAY.

SUPREME COURT—CHAMBERS—Held by Judge Barnard.—Nos. 9, 121, 138, 139, 140, 141, 142, 143, 144.

SUPREME COURT—GENERAL TERM—Held by Judges Ingraham, Barnard and Cardozo.—Nos. 231, 232, 233, 235, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257.

COMMON PLEAS—TRIAL TERM.—Part 1—Held by Judge Daly.—Nos. 889, 97, 432, 843, 966, 30, 322, 697, 673, 860, 944, 922, 923, 68, 427, 787, 761, 161, 778, 772, 895, 952, 475, 913, 700. Part 2—Held by Judge C. P. Daly.—Nos. 73, 847, 104.

BROOKLYN COURTS.

SUPREME COURT—SPECIAL TERM.

A Lawyer Charged with Contempt.

Before Judge Gilbert.

Carrington et al. vs. Spitzer et al.—This suit is brought for alleged fraudulent representations, and a short time since one of the defendants (formerly oil merchants at No. 31 Cedar street, New York,) was arrested on an order granted by the Court. He was subsequently released on bail, which the plaintiffs declare is worthless. Yesterday counsel for plaintiffs, Mr. James W. Monk, appeared before Judge Gilbert and moved to have Mr. Samuel Hirsch, the counsel for defence, punished for contempt of Court, in having procured the approval of the bond by the Court. Affidavits were read by Mr. Monk to the effect that Mr. Hirsch had obtained the approval by the statement that plaintiffs' attorney was satisfied, which was false. The accused attorney read his own affidavit, denying this and setting forth that he himself had been deceived as to the responsibility of the bondsmen. Judge Gilbert reserved his decision.

After these proceedings a newspaper reporter made application to the plaintiffs' counsel for permission to look at the papers in the case, whereupon Hirsch demanded that nothing about the case should be published until the decision should be rendered. He appealed to Judge Gilbert for an immediate decision, and charged that Monk was seeking to have this disgraceful business published in the papers. Judge Gilbert did not interfere.

The Kellogg Divorce Case Again—More Alimony Wanted.

This case came up again yesterday on a motion of counsel for defendant, Mrs. Rebecca J. Kellogg, for a reference to determine whether she should be paid a greater amount of alimony, and to fix the amount. Mr. Kellogg, who is a well known real estate dealer, sued for an absolute divorce, charging that Mrs. Kellogg had been guilty of adultery with James N. Fuller, her nephew. A verdict was rendered in Mrs. Kellogg's favor. Mr. Kellogg subsequently moved for a new trial, on the ground that new evidence had been discovered, and Judge Gilbert granted the motion, conditioning, however, that plaintiff must pay $500 counsel fees and $500 for expenses incurred by Mrs. Kellogg in defending the suit. The question has been raised, likewise, as to the disposition to be made of the younger children pending the proceedings in the case.

Mr. Townsend, for the defendant, yesterday read the petition of Mrs. Kellogg, setting forth that until the 15th of March, 1870, she lived with her husband at 191 President street, and the expenses of maintaining their household were close upon $6,000 a year. Since she has lived apart from her husband she has received from him $125 in cash, and, in addition, $125 a week, from which she has been obliged to support herself and her five children. This money has been given to her under an agreement or stipulation entered into between her and her husband, and signed by her under a misapprehension of the extent of her husband's means. She has learned that he is entitled, under the provisions of his father's will, to one-fourth of an estate, undivided as yet, amounting in value to at least $500,000, the greater part of which lies in and about Elizabeth, N. J.

The affidavit of the eldest son, Edward Kellogg, also read yesterday, alleges that the deponent's father agreed that he might live with his mother and that Mr. Kellogg should pay $7 a week for his board, and also recites a provision of the will of his grandfather, Edward Kellogg, by which $5,000 was left to Edward J. Kellogg in trust for the deponent, the income of which was to be for his benefit until he arrived at the age of twenty-one years, when the whole sum is to be paid.

Mr. Townsend also read the stipulation which had been entered into by Mrs. Kellogg and her husband, and the provisions of the will of Mr. Kellogg's father which relate to the same.

Mr. John Winslow, for plaintiff, submitted Mr. Kellogg's affidavit, which in reply to that portion of Mrs. Kellogg's petition which states that the expenses of their household were $6,000, says that Mrs. Kellogg was needlessly and recklessly extravagant, and that their expenses should not have been more than $4,000. He recites further the stipulation already spoken of, and claims that its provisions with reference to the children and their schooling have not been observed. In conclusion, he urges that his means have been greatly overestimated by his wife, that his income is but $2,000 a year, and the expenses to which he has been driven by the unhappy state of his domestic affairs are more than he can sustain.

Affidavits of Charles B. Baldwin, one of the executors of the will of Mr. Kellogg's father, as to the estate left by the will, and of William Colt, as to an interview with Mrs. Kellogg about the two younger children, were also read.

Mr. Winslow asked that the terms on which the new trial were granted should be modified, and that Mrs. Kellogg should cause the two younger children to be sent to school.

Mr. Townsend read an affidavit from Mrs. Kellogg, that while the children were at the school of Dr. Gunn, of Washington, Conn., which was the school mentioned in the stipulation, her letters to them were regularly opened and read by the doctor before they were handed to the children. He asked that some other school be designated.

Judge Gilbert said that the children must be sent to school, and Mrs. Kellogg must not contract debts for her husband to pay.

Decision reserved.

JOURNALISTIC NOTES.

The Whitehall (N. Y.) *Times* newspaper is offered for sale.

Colonel B. C. Yancey has bought the Atlanta (Ga.) *Intelligencer*.

An enterprising paper in Florida pays $1 25 a month for its telegrams.

Two nephews of the late C. L. Vallandigham are employed in the Troy *Whig* office as compositors.

Mr. Waldo M. Potter, formerly of the *Saratogian*, has withdrawn from the Omaha *Republican* and will return to Saratoga.

W. N. Hudson has resigned his position on the Cleveland *Leader*, and accepted the place of managing editor of the Detroit *Tribune*.

One of the reporters of the New Orleans *Republican*, who has just fallen heir to $40,000, has taken a month's vacation, and at its expiration will return to his duties.

Mr. J. N. Cardozo, of Savannah, completed his eighty-fifth year on the 17th inst. He has been connected with prominent Southern papers for the last fifty-five years.

Mrs. Roger W. Hanson and Mrs. F. W. Stone propose to publish at Lexington, Ky., "as an appropriate medium for the expression of Southern genius in the departments of history, poetry and general literature," a monthly, to be styled the *Mississippi Valley Magazine*.

Two clergymen, late editors of the *Ministerial Union*, a paper which appeared for four consecutive weeks in Chicago, closed their valedictory article as follows:—"Chicago is a good place to publish a religious paper, providing that three pages serve Satan and the other one is mixed."

TOMBS POLICE COURT.

Breaking Up the Dens—Daring Robbery in a Street Car—"Fatty" Davis in Trouble Again—"Pulling" Pig Iron—Damon Denying Pythias—Sharp Practice.

Before Judge Hogan.

Sunday's joys and frolics, when they are carried beyond the moderation mark, generally terminate in Monday aches. The Court was full, and every artist who had a part to play in the drama of the day was early at his post. The scene upon the stage of justice was a thoroughly Monday morning one, and unlike the gatherings of any other day in the week. On the opening of the play yesterday morning the first scene developed the case of two pickpockets. One of them gave his name as Charles Josephs, living at the corner of Fifty-fifth street and Second avenue. But he was instantly recognized in Court as an old acquaintance, and he now stands indicted on the books of the establishment as Manuel Strose, his real name. This worthy youth was accompanied in his expedition on Sunday by a confederate named James Green. They got into a Third avenue car at the City Hall on Sunday evening and rode up town as far as Sixty-third street. Seeing a man named Henry Barrett, of 299 Third avenue, asleep beside them, both gentlemen began to playfully empty his pockets of their contents. Barrett suffered these delicate little attentions for some time, until Strose made a

TUG AT HIS TIMEPIECE,

when the good-natured sleeper, jumping up, found his "ticker" gone. He started at the thief, but this agile youth appeared to have had his heels made to suit his fingers, for he disappeared like lightning, with the angry Barrett in pursuit. The chase was continued for some time, the avenger suffering martyrdom as he went from all the dogs in the neighborhood, who grabbed at his legs as he shot by them. He was rewarded at last by a generous volunteer, who nabbed the flying thief and held him till Barrett and a policeman came up. The second pickpocket was

CAUGHT UPON THE CAR,

and both were brought before Judge Hogan yesterday. Strose was searched at the station house, and one of those amusing little toys known as "A skull-cracking shooter" was found upon his person. Both were committed to answer.

Next in the line of the procession came a modest, retiring youth, who confided his name to the questioning clerk in a flutelike tone, but very *pianissimo*. He feared no doubt that the echoes might catch the sound and carry it to the sidewalk. This delicate sprout, so shrouded in sensibility, stands recorded on the police register as Lott Lemonson, of 117 West street. Mr. Latt dropped into 564 Broadway on Sunday evening and there dropped $324 in United States Treasury notes, the property of Samuel McKnight, into the open palms of Mary Mills, one of the waiting girls. Mr. Lemonson could not have been at

PRAYER MEETING,

for, unless on the occasion of strawberry festivals, such adjuncts are not numerous at these gatherings. Perhaps Mr. Lott likes to enjoy his strawberries in his own way, and the delicacy of his nature suggests a private consumption in preference to a public feast, as more in harmony with the gentleness of his disposition. A Mr. Albert Franklin, of 87 Thompson street, saw the covetous Mary abstract the package of money from the coat pocket. Lott and Mary Mills were sent down stairs, partly for their erring ways and the remainder in consequence of the pointed vision of Albert. An old face is a cheering thing to look upon, especially if it is the face of a friend, and even in the case of an enemy it is better to have to deal with one whose ways are familiar than with a strange one. An old face, though belonging to a young man, and a well known one, too, in halls of justice is that of

"FATTY" DAVIS,

alias James Nolan, alias George Ford. "Fatty" is one of those ubiquitous young enthusiasts who are constantly coming to the surface. He is a pronounced communist, and believes the basis of universal affection should be an equal distribution of property. "Fatty" is somewhat in advance of the great body of conservative communists, as he would not only have the distribution equal, but also early. So that as the times are somewhat out of joint, and men generally are not prepared to take up this doctrine, "Fatty" has put himself forth as the champion of his principles, and as men are not willing to share with him, he helps himself. Davis inaugurated this system abroad some time ago at the Paris Exhibition. He was rather before the time, even there, and the galleys was the result of his rashness. He has since then made several excursions to the Tombs for clinging so tenaciously to his ideas. As late as last week he was invited before his Honor Judge Hogan, but the Judge was reluctantly compelled to part with his company, as there was not sufficient evidence to retain him. On Friday last, in company with a disciple, whom he has gained over to his way of thinking on the property question, he visited the jewellers' store of

MERRILL, FITCH & ALLEN,

at 19 John street. They represented themselves as merchants from Syracuse, and said they wanted to purchase a large quantity of jewelry. On that occasion they left the store without making any purchases and returned this morning. After looking over a quantity of the stock, William Watson, "Fatty's" friend and disciple, took such an affection to a gold watch chain that he slipped it in his pocket. The young man who was waiting on this precious pair saw the action and at once shut the door, telling the old man he must disgorge. Watson did hand out the trinket and then sat down on a sofa which is kept for the use of less enlightened customers. Officer Gunson, of the Twenty-fifth precinct, was sent for and he arrested the thieves. When the aged Watson had removed his elegant person from the sofa

A PAIR OF BRACELETS

was found there and both now stand charged with the robbery of goods of the value of $85 50. Watson is forty-three years of age, wears a beard which is very coarse and tolerably gray, spring glasses; his head is bald, and as he dresses well his appearance is very deceptive. When brought up for examination "Fatty" denied having any knowledge of his friend and declared he never had any conversation with him in that store. He even went so far in his confidence in human nature as to ask that his friend be put on the stand to swear he did not know him. His Honor deemed this practice a little too sharp and said he had not the slightest doubt but that if either one was put upon the stand he would swear he did not know the other. Bail was named at $3,000 and as it was not forthcoming the worthies were retained.

An examination extending over several hours was made in the case of Charles Wilkinson, the proprietor of one of the houses broken up by the police last week in Greenwich avenue. In view of the terrible nuisance these places have been to the inhabitants of that locality and the fearful example it is in the sight of such a number of children as live there, Judge Hogan had a number of residents from that locality brought up as witnesses to prove the characters of the houses. This man was allowed to go upon his promise that he would go into some other business to make a livelihood and never again open a place of this kind.

His Honor said he had no wish to persecute these people or be too severe with them, but he was determined to

PROTECT THE MORALITY

of the people to the extent of his power. There is a large proportion of poor people in that district, said the Judge, and I will not have them insulted and annoyed every time they come out of their homes. I am determined to break up this business in Greenwich street, and I warn you now to give it up,

STABBING AFFRAY AT NEWBURG.

Tragical Result of a Stone-Tossing Match.

On Sunday night an affray occurred in a Chambers street saloon, at Newburg, resulting in the serious and possibly fatal stabbing of James Dunn by Philip Ryan. On Sunday morning the parties had been engaged in a match at tossing cobble stones for a purse of $40, which had been won by Dunn. Some time ago Dunn had won a similar match, by which Ryan had lost $25. There was a rivalry between them, and bad blood had been stirred up. About a week ago Ryan made a lunge at Dunn with a knife, but inflicted only a slight wound. The assailant was arrested, but Dunn refusing to appear against him he was discharged. On Sunday night, after the parties had been drinking pretty freely, the old grudge was brought up and hot words and threats passed between them. They determined to go outside the saloon and fight out the quarrel. Some of the bystanders tried to prevent a collision, but were warned off by Dunn, who said he did not want anybody to interfere. The two clenched, and after a short struggle Ryan "threw" Dunn, falling across him and holding him down. While in this position Ryan drew a dirk-knife and stabbed Dunn, who was lying with his face downward, four times in the back. Three of the cuts were not serious, but the fourth, penetrating to the right kidney, will probably, if inflammation supervenes, result fatally. After the fourth stab had been delivered the crowd dragged Ryan off the prostrate man, who was then conveyed to his residence and received surgical treatment. Ryan was arrested and locked up. On Monday he was committed to await the result of Dunn's injuries. Ryan is known to the police as a desperate character. In September last he assaulted, with a butcher knife, an officer who was trying to arrest him. The blow was, however, a glancing one, and no injury was done except cutting the breast of the officer's coat.

THE BIGGEST SHAD.—The biggest shad on record was caught last Thursday in the Connecticut river, near Hartford. He measured two feet four inches from nose to tail and weighed eight and a half pounds.

FOSTER THE MURDERER.

Application for a Writ of Error and Stay of Proceedings Not Granted.

DECISION OF JUDGE CARDOZO.

Judge Cardozo, of the Supreme Court, to whom application was made for a writ of error and stay of proceedings in the Foster case, yesterday rendered the following decision. It will be seen that all the points of objection raised on the late trial by Foster's counsel are reviewed by the Judge and each pronounced untenable. As this case is not appealable to the General Term the only recourse to prevent execution of the extreme penalty of the law on the 14th of next month, pursuant to sentence, is to find some more complacent judge or interposition of executive clemency on the part of the Governor. The following is the opinion of Judge Cardozo, which will be found both clear and exhaustive on the subject:—

The People vs. William Foster.—Application has been made to me by the prisoner's counsel for a writ of error and stay of proceedings in this case, and the statute not allowing them as a matter of right, it becomes my duty to review the grounds upon which the application is made, and to grant or refuse it according as I may think there is or is not any point worthy of consideration. I shall briefly notice the exceptions taken in the progress of the trial in the order in which they are stated in the bill of exceptions. The first relates to the special plea interposed by the prisoner based upon the objection that a Court of Oyer and Terminer cannot be held by a judge assigned to sit in General Term. I do not think it necessary to add anything to what I said at the trial upon this point. The case of McCarron vs. The People (13 N. Y., 74), in the Court of Appeals, disposes of that matter. The next exception is to the overruling of the challenge to the array. The ground taken by the prisoner's counsel was that the Court could not, until the first panel, returnable on the first day of the term, was exhausted, make an order for another panel. No authority is cited. The objection is untenable. The act of 1847, chap. 495, expressly provides that after the deposit of the ballots by the County Clerk, as required by law, the several courts in the city of New York "may order as many jurors to be summoned for their respective courts as in their judgment may be necessary (sec. 9). It will be seen that the order may be made at any time after the ballots have been deposited, and the question of how many may be necessary rests entirely in the judgment of the Court.

It is next said that it was error to overrule the application of the prisoner's counsel to attach jurors who had been personally served and did not appear when called. To this there are several answers. First—That it does not appear that there was any juror who had been personally summoned who had failed to attend without having been previously excused by the Court; but if it did, the question whether the Court would attach him is one resting entirely in its discretion. It is a matter for the Court only. The counsel or the party has nothing to do with it. The revised statutes provide that the jury shall consist of the first twelve (who are in all respects competent) who answer to their names. The counsel for the prisoner is in error in supposing that the act of 1870 confers any right upon the prisoner or obliges the Court to enforce the attendance of a juror. By reading the third and fifteenth sections of that act (chapter 539) it will be seen that only a power is conferred upon the Court, to be exercised in its discretion. The ruling at the trial was correct as to the law, and the discretion of the Court was properly exercised; for there is no pretence that any absent juror was designedly kept away, and it would be intolerable to keep the jurors empannelled waiting while the State (for the absent jurors may have gone to various parts of the State) was being scoured in search of those who had failed to attend, and who, it is not suggested, were likely to be at all more competent to sit than the many who were rejected.

An objection was taken to the form of oath administered to George W. De La Vergne, who was called as a juror and sworn as a witness upon challenge made by the counsel for the prisoner. I think there are several reasons why this presents no ground for the present application. It was conceded by the counsel for the prisoner that the oath, to use his own language, was "the same that the excellent clerk of the Oyer and Terminer has been administering for forty years." To this oath, thus used, without objection, the counsel simply objected; and though called upon to state his ground he omitted to do so until after the objection had been overruled. It was then too late. But, moreover, the prisoner's counsel did not even then ask that he should be sworn upon each challenge separately, and as the specification of the ground or cause of challenge was not made until after the juror had been sworn as a witness, the issue could not be specified in the oath otherwise than it was. If the prisoner's counsel wanted the oath to refer to the cause of challenge, he should have assigned the cause at the time of challenge, instead of challenging generally, and stating the ground after the oath, or else he should have requested that the witness be reworn after the cause of challenge was assigned. Moreover, this juror, the only one as to whom the objection as to the form of oath was taken, was rejected on the prisoner's own application, and the prisoner could not have been prejudiced.

The substance of the examination of Mr. McSwiggan is that he had conscientious scruples against finding a verdict of guilty where the punishment is death, although he would, if sworn, try to do his duty. He was plainly incompetent, and was properly rejected upon the challenge of the District Attorney (Walker vs. The People, 32 New York, 160).

The next objection is palpably not well taken. The question allowed expressly limited what was said to what was said in the presence of the prisoner, and was plainly competent. If the witness in answer said anything which the counsel thought material, and which occurred when the prisoner was not present, a motion should have been made to strike it out. But what the witness said not strictly responsive to the question was not important, and he was stopped as soon as it transpired that Foster was not present, and was directed by the Court to "pass over everything except what took place when Foster was present."

The next exception is to the exclusion, as a witness on behalf of the prisoner, of his wife. No authority in support of her competency was cited on the trial, and none has been produced on the present application, and it is conceded that at common law she could not have been examined. The counsel argues that because by a recent statute the prisoner may, at his option, testify on his own behalf, therefore the incompetency of the wife is removed. But that statute (Laws of 1869) only allows the prisoner at his option to testify, and the reasons for the rule excluding the wife remain unaltered. The statute of 1867 (chap. 887) has specified the instances in which husband and wife are competent or compellable to give evidence for or against each other, and this is not one of them. The Legislature, therefore, evidently understood that an express statute for such a purpose was necessary, and they have not said by the act of 1869 that the wife may be examined, but have expressly limited it to "the person charged," and statutes in derogation of the common law are not to be extended by construction to work a repeal of a common law rule, unless they are so inconsistent with it that both cannot stand together. The rest of the exceptions relate to the requests to charge. As to the requests presented by Mr. Barnett, which were not charged, I have to say:—The sixth, eighth, ninth and twelfth relate to the crime of murder in the second degree, and were properly refused because there was no evidence in the case calling for instructions as to what constituted that crime; and, besides, the requests were not in conformity with the law, it having been settled by decisions of the Supreme Court and the Court of Appeals that to constitute the crime of murder in the second degree the death must have been occasioned by the prisoner while engaged in the perpetration of some felony other than that of the murder itself. Of this there was no defence in this case. If, against their objection, I had charged that the evidence would justify a conviction of murder in the second degree, and exception had been taken to it by the prisoner's counsel, it was clear under the decisions that I should have committed a fatal error, and, if such an exception would have been good, it is obvious that it was right to refuse to charge on that point as the counsel requested.

As to the eleventh request, respecting the effect of intoxication, I think I need only say that the refusal to charge otherwise than I did and the charge as given upon that subject were plainly correct according to the ruling of the Court of Appeals in Rogers' case (18 N. Y., p. 9) and in Kenney's case (31 N. Y., p. 335).

In regard to Judge Stuart's requests—In respect to the refusal to charge his first proposition, I need only say that at no time has any defect in the indictment as one charging the crime of murder in the first degree been pointed out to me, and I have discovered none myself. In reference to the third proposition (which was refused), it is to be remarked that I had already at his request charged that "under the indictment the jury could convict of murder in the second degree, or of some one of the degrees of manslaughter," a proposition which I repeated in my general charge, telling the jury they had the power to find the prisoner guilty of "any degree of homicide less than the principal one;" and if the third request meant anything more than I thus both before and afterwards charged, it meant that there was evidence in the case to establish the crime of murder in the second degree, and as there certainly was not, it was right to refuse so to charge.

The twelfth request relates to the subject of intoxication and is fully disposed of by the observations I have already made upon that subject in reviewing the requests presented by Mr. Barnett.

I have thus considered every exception taken on the trial which the prisoner's counsel incorporated in the bill, although but few of them were urged upon me on this application. If I thought that so much as a fair question existed as to either of them, I should not hesitate to grant the writ; but after careful and dispassionate reflection, with full consciousness that it concerns life, I am unable to see that there is any point whatever of which the prisoner can complain; and knowing how fairly, not to say liberally, the trial was conducted, and still believing that upon the evidence no verdict except that of murder in the first degree could rightfully have been found, I feel it my duty to deny the application.

THE ERIE RAILWAY WAR.

Jay Gould Called Upon To Make Good the English Stock—Argument of Counsel.

Mr. Southmayd resumed his argument yesterday in the United States Circuit Court, before Judge Blatchford, on the motion to compel Jay Gould to deliver up 30,000 shares of Erie stock, which, it is claimed by Heath and Raphael, he has illegally abstracted from the receivership of Mr. James H. Coleman, and also to enjoin the Erie Company from enlarging the registration of their stock at the Farmers' Loan and Trust Company, by registering upon the books of that company 30,000 shares of stock, which, it is alleged, was taken from the Heath and Raphael stock. He resumed his argument at the point where he left off on Saturday, and went on to state that the registration of Erie stock at the Farmers' Loan and Trust Company was a positive proof of its authenticity. It was an establishment instituted by the Erie Railroad Company for having, independently of its own office, some recognized authority which would put the mark of authenticity and genuineness upon its stock. Following the action of Mr. Gould, he would not say that the Farmers' Loan Company did an injustice in refusing to register this stock.

Judge Blatchford inquired whether it was in evidence that the 30,000 shares of certificates which Mr. Hilton brought down to the Farmers' Loan and Trust Company were upon the books placed there by the Erie Railroad Company prior to the time when Mr. Von Hoffman left these very certificates at the office of the company, and which were put into the hands of Harris.

Mr. Southmayd said both sides admitted that such was the fact. Much importance seemed to be laid upon the supposed fact that this registration at the Farmers' Loan and Trust Company was a merely local circumstance affecting only the sales of stock in New York market without injuring the salability in Europe. If that were really so it would be no answer to this motion, because it is in this country. Violent hands were laid upon this stock because an intention was exhibited of putting it on the market here, and it was not for the party who had done the wrong and made the stock entirely unmarketable where the corporation was established that they could dispose of it in Europe. No establishment like the Farmers' Loan and Trust Company existed in Europe; but, unlike the stock of other shareholders, they could not introduce their stock into New York and realize a dollar upon it. He contended that Mr. Gould's conduct was calculated to confuse the Court, and ridiculed the idea of his supposed candor and justice in placing before Heath and Raphael those cancelled certificates after all their value had been extracted from them. The great impudence and daring recklessness of Gould, sustained, as he was, by very able counsel, could not shut out the truth that he had carried off the genuine certificates, replacing them with skilfully executed forgeries. As to whether this new stock issued by the Erie Company was genuine and regular, and could have been properly registered on the books of the Farmers' Loan and Trust Company, he contended that they were wholly illegal and entirely fraudulent, and that upon no principle of justice could they be placed on the Farmers' Loan and Trust Company. They were produced by fraud, and nothing that afterwards took place, no plan, however skilful, could do away with the force of that circumstance. If convertible bonds for $3,000,000 did not compose the basis for the issue of this new stock then it was spurious. He maintained that the over issue of these 30,000 shares was a gross fraud on the part of the Erie Railroad Company, for which Gould himself was personally responsible. Having read the evidence of Gould and the other officers of the company, which has been fully recorded in the HERALD, he observed that so completely filled with arrogance and pride had these men become, that Fisk boasted he could change the name of New York to Fiskville. They openly defied the authority of these courts. They drew his clients into a litigation they would gladly have avoided by robbing them of their stock, and he was satisfied if the Court admitted the wrong it would not be slow to remedy it. Mr. Houghton had referred the possible incarceration of Gould on a most extraordinary proceeding, but he did not think that the community in general would shed a tear at the result. He ascribed the purpose which originally prompted Fisk and Gould to this course of action to a fear that the influence of the English shareholders should be directed to drive them from office in the company, and to avoid such a possibility they get the stock certificates out of their hands and put them in the possession of James H. Coleman, the Receiver. The wrong which these men had brought upon the Erie Railroad ought to have prevented any honest stockholder from supporting, unless another motive and a very apparent theme determined their conduct. These men, in their determination to permit nothing to debar their purpose, sought to thwart the administration of justice, their favorite system of operation, the purchase of the Legislature being in this instance unsuited to their necessities. If the Court came to the conclusion that this motion should be granted, the question came up, what time should be allowed to replace this obstruction? In his opinion measures should be adopted to compel the restoration of these 30,000 shares in their pristine condition, and that there shall be no registration of false stock on the basis of these cancelled certificates. In this connection he referred to the compromise sought to be arrived at alluded to in the affidavit of Mr. Gould as worse than useless for Mr. Thompson, who was represented as the agent of Heath & Raphael, was as much interested in the success of the Erie Railroad as Frederick A. Lane or Gould himself. Gould was entitled to justice untempered with mercy. If he wanted grace in replying to this order he should throw himself on the mercy of the Court, exhibit penitence, restore this abstracted stock and discontinue certain purposes now going on under the eyes of the Court in regard to his clients, which was considered wrongful in the highest degree; repeal this fraudulent bylaw and stop his piratical raids. If he will not do these things, then, when he asks grace, let the answer be, "You will not have it."

The argument was then adjourned to Thursday next.

THE FORTY-THIRD STREET HOMICIDE.

Kenney Held for Trial—He Denies His Guilt.

Coroner Keenan yesterday afternoon held an inquest at the City Hall in the case of the unknown man who died at the Twenty-second precinct station house last Thursday evening. Deceased and Michael Kenney had a quarrel in front of premises 557