THE GREAT INJUNCTION CASE.

Another Grand Field Day Before Judge Barnard.

Affidavits of the Mayor and Heads of Departments.

The Whole Arcanum of Municipal Mysteries Exhibited to Public View.

Complete Exhibit of City and County Finances.

ARGUMENT OF COUNSEL.

Rarely has the Supreme Court Chambers been so densely packed, rarely has the assembled crowd presented such a motley variety of character, and rarely has such eager expectancy animated every face as at the opening of the Court yesterday morning. It is evident that the city injunction case—the magnet of interest drawing together such a crowd—has taken a pretty deep hold on public attention. Everybody appreciates the fight as one of unusually exciting character, and, of course, is anxious, not only to watch its progress, but to witness the denouement. City office-holders of higher and lower degree, politicians of every possible stripe, business men of all kinds, men of heavy and light calibre in the professions—an *omnium gatherum*, in fact, of every representative phase of the people—comprised the throng. There was a busy hum of voices discussing the various aspects of the controversy and its probable result, till Judge Barnard took his seat on the bench and the Crier, with a rapidity of unintelligible utterances, calculated to astonish a "heathen Chinee," convened the Court.

On the bench, sitting beside the Judge, at the opening of the Court, were City Judge Bedford and the Assistant District Attorney.

THE OPENING PROCEEDINGS.

From the early hour at which Corporation Counsel O'Gorman put in appearance in Court it was pretty evident that the work of repelling the attack of the East Side Citizens' Association against the chief officers of the municipal government was commenced with the first note of alarm. The wonder, indeed, arose as the case proceeded how it was possible for the Corporation Counsel and the defendants themselves to have prepared so exhaustive a reply to the complaint, as against each and every one—the Mayor and the heads of departments. The affidavits were all read by Mr. O'Gorman, and nothing could better attest the interest the citizens feel in those proceedings than the fact that, though nearly four hours were consumed in reading the affidavits, the court room was crowded to the very moment of adjournment. Mr. O'Gorman read in a clear, full voice, emphasizing salient points, and thus engrossing the earnest attention of the crowded court room to the end.

THE ARRAY OF COUNSEL.

There was quite an array of counsel present when Mr. O'Gorman called up the case, stating that he appeared for the Mayor, Alderman and Commonalty and for the Board of Supervision.

Messrs. William O. Bartlett and Mr. Bartlett appeared for Mr. Tweed.

Messrs. Brown, Hall and Vanderpoel for the Mayor individually.

Mr. Beach for Comptroller Connolly.

For the plaintiffs, Messrs. Barrett and Strahan.

The Case Called On.

Mr. O'Gorman called up the case of the injunction against the city. He was now ready to meet and reply to the charges against the defendants.

MR. W. O. BARTLETT'S REMARKS.

Mr. Bartlett, counsel for William M. Tweed, first addressed the Court. He said:—

I appear here as personal counsel of Mr. William M. Tweed. I had understood from the public journals that there was to be a sort of adjourned town meeting here this morning, in the presence of your Honor, in which an attempt was to be made to give to partisan politics and to the struggle for power and office in this city a legal aspect and a judicial solution, and that men who have wooed in vain for the sweet voices of the people to place them in office were about to attempt to wrest by judicial proceedings the seats of those who had been elected to power by votes of the people. The name of my irrepressible and gushing friend and quondam client, Mr. Foley, appeared as leader, and the name of Mr. Tweed was in the paper. I am retained by Mr. Tweed to appear for him in all actions affecting him officially or personally as his private and personal counsel. He handed to me on Friday a pamphlet which was supposed to be a copy of the complaint of Mr. Foley. I took it and told him I would be ready on Monday morning to go on, relying on that to be a true copy of the complaint. But the next day I found it a mass of jumbled matter, without any connection, the middle of the pamphlet, from pages 21 to 24, were omitted, and the substance of the complaint was in such a state of confusion that I have been utterly unable to make out what the charges are against Mr. Tweed. I will presently hand the copy to your Honor and you will see my statement is entirely correct. I don't wish to interfere with the proceedings or to delay them at all. Mr. Tweed is ready to answer any charges against him wherever made, by whomsoever made, at any time and at all times. All that we ask preparatory to answering them is to know what they are, and of that he has not yet been informed. While I am on my feet I will take this the fittest opportunity, because the earliest, to congratulate Your Honor upon the circumstance that the high estimation which I and others who have known you have long placed upon your judicial character, has suddenly become the general—I may say the universal—sentiment of this community. It has been the fortune of a good many men who have revered their country that their fame was principally posthumous. Posterity only meted out to them the full measure of justice. I remember a striking instance at a period to which, I suppose, Your Honor's memory does not extend, when the press of the whole country was more completely filled with abuse of John Quincy Adams than the press of this city was ever filled with abuse of Your Honor. If the correspondence from Washington of all the press, if the speeches of all the Southern members of Congress were to be taken as an indication of public sentiment—he was the most despised, the most hated, most detested man living. But when at his post of duty, where he had long served his country faithfully, he was stricken down by the hand of death, there, as it were, in the twinkling of an eye; the voices of those who had been for twenty years condemning him unsparingly, were the loudest in his praise. I remember, when a boy, listening to that eloquent man, Mr. Holmes, from that hot bed of nullification and secession, South Carolina, deliver over his remains one of the most eloquent, touching eulogies I have ever heard. That example was full of instruction to me, and I have thought how little is to be regarded the violent abuse of political opponents as an indication of the true standing of any man. But I rejoice that Your Honor has been more fortunate. While you are still in the prime and vigor of life the whole community applauds your judicial conduct in this case. Your decision has a peculiar importance at this time. And it is, therefore, proper that any man whose character and whose personal standing is to be affected by the decision which Your Honor shall make in this case shall be fully heard. It is emphatically necessary that he should know before the case is decided what the charges against him are. I therefore request, whatever action may be taken in this case, this matter may be left open for Mr. Tweed to be heard by counsel subsequently to the charges being served upon him.

MR. O'GORMAN'S ADDRESS TO THE COURT.

Mr. O'Gorman, rising, said:—

May it please the Court, I trust Your Honor will not suppose that Counsel for the Corporation has less confidence in Your Honor because he addresses you as a Judge bound to do your official duty, and, as he believes, having a full intention to do all your official duty. I ask Your Honor only for that which Your Honor is bound to give, that is, simple justice between the plaintiffs and defendants in this case. And I should think but very poorly of this Court if for one instant I entertained the suspicion that, either for the transient favor of a part of the people or for fear of the transient loss of such favor, or even for the squalls and tempest of what passes by the name of public opinion, could for an instant disturb the calm and deliberative atmosphere of the judicial mind, in which condition alone truth can properly be investigated before the judge of any court. It would be indelicate and improper for me on any ordinary occasion to press upon the Court any step or motion which has not the full concurrence of all the defendants in the case; and I regret that I cannot in this case at once state my perfect willingness to agree to the motion of the learned counsel for Mr. Tweed. On Thursday last, if the Court please, an injunction was granted by Your Honor arresting the necessary—and as I am in a position to prove—the legitimate operations of the Corporation of this great city.

Mr. BARTLETT—Counsel for the Corporation has misapprehended me. I do not move for a delay. I ask merely that the case be kept open for me to put in an answer to the charges to be preferred against us, whenever we know what these charges are. Beyond this we do not desire to interfere with the proceedings already initiated.

Mr. O'GORMAN—Well, we shall endeavor to accommodate ourselves so that no injustice shall be done to anybody by pressing these proceedings.

Mr. BARTLETT—We ask no delay.

Mr. O'GORMAN—I understand, and now that I do understand the position of the learned counsel, let me continue for one instant. When that motion for injunction was made, as Your Honor remembers, it was made on a complaint which has about it a good deal of the air of a newspaper article—a great deal of the air of

A POLITICAL HARANGUE,

and very little of the air of a proper, legitimate and exact pleading, as we understand pleadings in courts of justice. In addition to this, an unusual course has been adopted—the motion having been *ex parte*, without any one interested having notice to appear, or notice of hearing from the other side being served. This motion was accompanied with an address to Your Honor bearing on all the evidence close and eloquent preparation, having in it the keenest stings and bitterest attacks upon certain of the city officials. And therefore, Your Honor, it seems to me that it is entirely proper that now, on the first occasion, a statement should be spread before the Court, that affidavits at least should be read, so that the public may be enabled at once to see upon what grounds these officials base their claim to have acted—not illegally or improperly, but legally in the matters charged against them in the complaint. I therefore ask Your Honor to allow me to go on with the reading of the affidavits of the various defendants in this case. They are voluminous and will occupy some time, and then, if learned counsel on the other side desire to make any proposition, let him suggest them to Your Honor, and we will agree with them provided my clients, the Mayor, Aldermen and Commonalty and Supervisors, have now an opportunity to state their case before the public and Your Honor, as the other side have it.

Ex-Judge BARRETT—I don't quite understand the precise object of the remarks, both eloquent and poetical, which have been made by the learned counsel who have preceded me. The counsel for Mr. Tweed opened his remarks by saying that he had reason to believe that he was coming to a town meeting this morning. I have scrutinized the papers and can find nothing of that sort of thing in them. Though I might say, after listening to what that counsel had to say, that I might think differently. From the remarks made by him here before Your Honor he may well have thought that he was addressing a town meeting. He has adverted to the motives of the prosecution without himself being in readiness to say anything on behalf of the defendant for whom he appears. If the complaint or other papers served upon him were technically defective, in consequence of a clerical error or any other cause, he might have ascertained the facts of this prosecution, and would have seen in any journal in this city from the published complaint in what manner the facts differed from those stated in the copy of the complaint served on him.

Mr. BARTLETT (for Mr. Tweed)—I have not had an opportunity to see the newspapers since the copy of the complaint was served upon me.

Mr. BARRETT—I do not think that we ought to go into the motives of the prosecution without, at all events, stating in answer to it a simple and broad denial. There is nothing in the case to alter it from any ordinary case between the A B and C D. I simply endeavored to state, in as close and detailed a manner as possible, without verbiage or any attempt at peroration, just as though I had been in an ordinary case before Your Honor. I leave it to Your Honor and the public to say if this is not a fact. The remarks made this morning are the first that have been made in the case—*de hors*—the record. Counsel for Mr. Tweed has said a good many kind things this morning of Your Honor, in all of which we most heartily concur. He has recommended Your Honor for the course you have taken in granting this injunction. This is very well. I can only say that there is not the least suspicion that Your Honor was inclined to do any injustice against the defendant Tweed. Now we are ready to go on, but am I to understand that this case is to be argued piecemeal? Is my friend ready now?

Judge BARNARD—As I understand it, Mr. Bartlett is anxious that the case should proceed to-day, with the permission given him to put in affidavits from Mr. Tweed next Monday without any additional argument.

Mr. BARRETT—I object to this course. It is a matter of right that we should know what the affidavits are before any decision is made, and it is only proper that we should have an opportunity to address Your Honor on the subject.

Judge BARNARD—It is suggested that the whole case be adjourned over to next Monday, when all the affidavits will be put in.

Mr. BARRETT—Your Honor, we accept this course as satisfactory under the circumstances.

COMPTROLLER CONNOLLY'S COUNSEL.

Mr. BEACH next arose, stating that he was counsel for Mr. Richard B. Connolly (Comptroller) and was quite prepared to meet all charges against his public or personal character. He was much opposed to delay and wished to impress on the Court the necessity of immediate action. The gravity of the accusations required that they be immediately met. It was due to public and private interest that the matter be heard, and he, on the part of Mr. Connolly, was ready. In a few brief but well-timed remarks he complimented His Honor on the course pursued by him and the favor of the public, and said it was a judgment he had long entertained.

Mr. SMITH appeared for Mayor Hall individually, and expressed his desire to have the case proceed.

THE PAYMENT OF CURRENT EXPENSES NOT PROHIBITED.

Judge BARNARD said that an impression had gone abroad that the pay of the police, of the gas, of the laborers on the Croton Water work and on the piers and docks was prohibited. In making the injunction he had been careful not to prohibit these nor any of the ordinary salaries.

Mr. BARRETT—Your Honor knows that I was careful of this and offered to make any amendment to avoid this.

Judge BARNARD—Yes, you and I know what was in our injunction, but some of these persons, who haven't read a law book for years, if they ever did, don't understand it.

THE REMOVAL OF THE COURT.

Judge Barnard, in view of the uncomfortable and packed state of the room, stated that he would move the Court into the Oyer and Terminer room, on which a regular stampede of reporters, counsel and the general public followed. As soon as order was restored Mr. Bartlett announced that he had been served with a complete copy of the complaint, and withdrew his objection to proceeding.

The Affidavits.

The first affidavit read by Mr. O'Gorman was the

AFFIDAVIT ON BEHALF OF BOARD OF SUPERVISORS.

Now comes the Board of Supervisors of the county of New York, by Richard O'Gorman, its attorney and counsel, and denies that the said Board or any of its members have ever entertained any idea of raising, or intend or threaten to raise, by tax upon the estates, real and personal, subject to taxation in the city and county of New York, in the year 1871, any amount of money whatever, for any purpose whatever, except said amount shall first be fixed and directed to be raised by the Board of Apportionment mentioned in the third section of the act of the Legislature of the State of New York, entitled "An act to make provision for the local government of the city and county of New York," passed April 19, 1871, and be set apart and apportioned as therein provided.

And the said Board of Supervisors denies that it or any of its members have ever entertained any idea of auditing or ordering to be paid, or intend or threaten to audit or order to be paid, claims against the county of New York to a greater amount than the sum which shall be set apart by the aforesaid Board of Apportionment, during the year 1871, for the purposes of the said county, or the government thereof, in accordance with the provisions of the third section of said statute.

And the said Board of Supervisors denies, on information and belief, that there are any facts in existence, or alleged in the complaint, tending to show, directly or indirectly, that said Board or any of its members intend to or threaten to perform any of the acts prayed to be enjoined adversely to said Board or its members or the public; and the said Board says that it, however, for any purposes of stopping litigation or gratifying the litigants, or satisfying the judicial conscience, it becomes necessary to continue the injunction at folios 84, 85 and 88 of the printed injunction order, neither the said Board nor its counsel can see any possible objection in enjoining the Board from doing that which the Board must by law do, and which, in all good faith, the Board and all its members intend to do.

Wherefore judgment, in the form best to be adopted by the Court, is hereby prayed and submitted to.

City and County of New York, ss.:—

A. Oakey Hall, being duly sworn, deposes and says that he is President of the Board of Supervisors, the above named defendant, and that the foregoing answer is true of his own knowledge, except as to matters therein stated to be upon information and belief, and that as to those matters he believes it to be true. A. OAKEY HALL,

President Board of Supervisors.

Sworn to before me, this 11th day of September, 1871, CHARLES W. LAWRENCE, Notary Public.

A DEMURRER.

On the conclusion of the reading of the affidavit Mr. O'Gorman read and served on counsel for the plaintiffs a demurrer, as follows:—

First—That plaintiffs have not a legal capacity to sue; and,

Second—That the complaint does not set out facts sufficient to constitute a cause of action.

Mr. O'Gorman then proceeded with the reading of other affidavits, as follows:—

AFFIDAVIT OF THE MAYOR.

Now comes the co-defendant, A. Oakey Hall, by Brown, Hall & Vanderpoel, his attorneys, and for answer says:—

He objects that plaintiff has not legal capacity to sue this defendant, and that the same does not sufficiently appear upon the face of the complaint to constitute a cause of demurrer, as defendant is advised and believes, for that there is no legal relationship, either upon contract or upon wrong and injury done the plaintiff by this defendant, between the plaintiff and this defendant, which entitles plaintiff in any respect to demand, as against this defendant, any of the relief which he asks for in his complaint.

This defendant admits each and every allegation in subdivisions third, fourth, thirteenth, fourteenth and fifteenth of the complaint. He denies generally, upon knowledge, information and belief, the allegations in subdivisions fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, sixteenth, seventeenth, eighteenth, nineteenth and twentieth. He denies specifically the allegations contained in the complaint at folio 21, that the average expenditure and

COST OF THE GOVERNMENT

of the city and county, during the two years and a half of this defendant's mayoralty, was $59,087,548 08, and he avers that, whatever the sum may be, there was during the whole of the year 1869, and of the year 1870, throughout its greatest part, but a small responsibility thereof to be debited (as the complaint ingenuously avers to debit) against what the said complaint terms the mayoralty of this defendant, for that, as the plaintiff well knows, the expenditures of said periods were made and authorized by boards and metropolitan commissions, and not by the city government as a municipal government.

He specifically denies that the result referred to in folio 22 of the complaint, or any result of

THIS DEFENDANT'S ACTIONS

as Mayor or as President of the Board of Supervisors, or as a member of the County Commission of Audit, or as a member of the Board of Apportionment, or as a member of the Sinking Fund Commission, was injurious to the best interests of the city; and he denies the further allegation, at such folio, that this defendant, as Mayor, systematically treated the provisions of law set forth in the complaint or any laws of the State, as if the same were of no binding force or effect.

He specifically denies the allegation contained at folio 24, that he is principally or in anywise whatsoever interested in the New York Transcript Association, or in the New York Printing Company, or in the Manufacturing Stationers' Company, or that at any time whatsoever he was so interested. He specifically denies, in his capacity as Mayor and personally, that he has a large pecuniary interest in the newspaper known as the New York *Leader* or any pecuniary interest therein, and he avers that at no time since he became Mayor has he had any pecuniary interest therein whatsoever, and that he has no prospective pecuniary interest therein.

And this defendant specifically denies that he, as head of a department in the city government, has been ever

DIRECTLY OR INDIRECTLY

interested in any contract, work or business or in the sale of any article, the expense, price or consideration of which was paid from the City Treasury, or by any assessment levied by any act or ordinance of the Common Council, or in the purchase of real estate or other property belonging to the Corporation which could be sold for taxes or assessments, or by virtue of legal process, at the suit of the Corporation.

He specifically denies that as an official of the city of New York he has connived with or aided any other officials, or anybody, to give the New York Printing Company a monopoly of the printing of the said city and county government, or to the Manufacturing Stationers' Company the monopoly of all the stationery supplied to the city and county offices.

He specifically denies that any officials of the city and county government, or this defendant as one of them, has openly or secretly or otherwise associated themselves together to set the

LAWS AT DEFIANCE

in order to secure large pecuniary benefits at the public expense; or that they or this defendant have by their acts destroyed or removed all or any barriers, checks and safeguards which had been erected by the Legislature in order to protect the treasury. This defendant denies specifically that he has ever received large or any whatsoever pecuniary benefits at the public expense in his capacity as Mayor. And he avers that beyond the reception of salaries, under laws and ordinances, he has never directly or indirectly received or derived, to his knowledge, any pecuniary benefit whatever from the discharge of the office of Mayor. He specifically denies that he has in an open or in a secret or in a flagrant or in any other manner set at defiance the provisions of the law referred to at folio 21 of the complaint.

He specifically denies each and every allegation contained in subdivisions nine and ten of the complaint, and he specifically denies that the claims referred to in subdivision nine were to a great or any extent fraudulent upon their face, and he specifically denies that he ever in any wise assisted in

FRAUDULENTLY AUDITING

any claims, or that any certificate that he ever signed was false or fraudulent.

He specifically denies and controverts that as a member of the Board of Apportionment he has in any manner as alleged between folios 52 and 55 of the complaint, or in any other manner, failed to perform his duties as a member of said Board of Apportionment. He specifically denies that the expenditures for the various departments and purposes of the city and county government, during the year 1871, are largely or in any excess of the sums allowed by law, or that he has openly or secretly or systematically, or without system, or in any manner, set at defiance as a city and county official the laws referred to at folio 60; and he specifically denies that as a member of said Board of Apportionment he has

FAILED TO MAKE PROVISION

in the terms of the second and third sections of the statute referred to at folio 63 of the complaint, or that as a member of said Board of Apportionment he has threatened or intended to apportion and set apart the sum of $9,000,000 in manner and form as alleged at folio 63. He specifically denies that expenditures are being made and liabilities incurred on behalf of the city, with the knowledge and approbation of this defendant, which are largely or to any extent in excess of the statutory appropriations.

And this defendant, further answering, alleges that on the 31st day of December, 1870, he

CEASED TO BE MAYOR

of the city of New York, under the terms of office, set up at folio 6 of the complaint; but that under and by virtue of a regular election he assumed a term of office on the 1st day of January, 1871, for a full term of two years, ending December 31, 1872. And this defendant, further answering, avers that all the provisions of the Charter of 1857, alleged in subdivision three of said complaint, have been duly repealed.

And this defendant, further answering, avers that when the Board of Apportionment met, and, indeed, before the first day came upon which it could by law convene, the

VARIOUS DEPARTMENTS

of the city government had been expending for their current expenses sums in accordance with the estimates therefor, which, according to the charter of 1870, they had theretofore duly made for themselves, and upon a basis of expenditure largely in excess of the basis established by the so-called two per cent law, and that before said law passed, revenue bonds, in anticipation of the collection of taxes of 1871, had been, in due course of and in conformity to law, issued to provide for said quota of expenses estimated and incurred as aforesaid, but that the said Board of Apportionment immediately began a system of reduction so as to conform and equate as far as possible the remaining expenses for the current year incurrable by the various departments.

And this defendant, further answering, says that

NEVER TO HIS KNOWLEDGE

as Mayor or as an individual, whether during this term or his prior term of office, has any officer of the Corporation been directly or indirectly interested in any contract, work, or business, or sale of any article the expense, price or consideration of which is paid from the city treasury, or by any assessment levied by any act or ordinance of the Common Council, nor in the purchase of any real estate or other property belonging to the corporation, or which shall be sold for taxes or assessments, or by virtue of legal process at the suit of the Corporation.

And this defendant, further answering, avers that the last official report of the Comptroller, referred to at folio 16 of the complaint, shows the following exhibits in relation to the state of the funded and temporary debt of the city and county of New York on the 31st day of July, 1871.

Here follows the report of the Comptroller, already published in the Mayor's message.

[The last official report of the Comptroller has already been published in the HERALD and it is therefore omitted.]

And this defendant further answering and meeting the allegation at folio 17 of the complaint, that the difference (assuming the figures of the complaint to be correct as set forth between folios 15 and 16) is in the increase in the funded and temporary debt of the city and county during the two and a half years of the mayoralty of this defendant the sum of $44,147,765 88, and not the sum of $83,028,427 71, as set forth at folio 17, and he avers that a large portion of this sum is a temporary debt, and that of this temporary debt and revenue bonds, about $14,000,000 will be due by redemption on or before the first day of February next, retired, and the temporary debt diminished by that sum.

And this defendant, further answering, avers, on information and belief obtained from an inspection of the books of the Finance Department, and information obtained from the stock clerk, who has held that office for the term of thirty-four years, that the city and county debt was contracted for, authorized and stands in mode, manner, history and relationship as now particularly set forth.

(This particularization has also been published in the HERALD in the recent message of the Mayor to the Board of Aldermen.)

And this defendant, further answering avers that he has never countersigned a city or a county bond that did not appear upon its face to have been authorized by an act of the Legislature, and which he personally knew to be so authorized. That the practice and usage of countersigning bonds of the city and county by the Mayor, and miscalled in the complaint issuing of bonds by the Mayor, is as follows:—

The bond reaches the Mayor by a messenger from the Bureau of the Stock Clerk, with the filling up of the body of the bond in the hand writing of a clerk in said Bureau and already signed by the Comptroller, and that thereupon the Mayor countersigns it, according to law, and the same is then sent to the Clerk of the Common Council, or of the Board of Supervisors, as the case may be proper in an instance of a city or a county bond, in order to have thereto affixed the appropriate seal of a city or county, accompanied with the appropriate signature of either the Clerk of the City or the Clerk of the Board of Supervisors, and is next returned to the Bureau of the Stock Clerk, where it is duly registered and issued to the proper party, who gives his receipt therefor. And this defendant avers, on information and belief, that each and every bond ever signed by this defendant has been duly issued according to law.

And this defendant, further answering, avers that the custom and usage in relation to signing the city or county warrants (referred to variously in the complaint) upon the city or county treasury by this defendant, as Mayor, has been as follows:—The warrant would always reach the Mayor with the signature of the Comptroller already upon it as the statutory drawer of the warrant, the warrant being attached to a bill or a voucher which had been already settled, adjusted and accepted by either the City Auditor or the County Auditor, as well as often other city and county authorities, as would appear by due signatures with which the defendant is acquainted, upon the back of said voucher or bill; and defendant has always countersigned or attested to the validity of any warrant without any inquiry into the nature or propriety of the claim comprehended in the warrant, beyond that afforded by the approvals already given, not only of the Comptroller, as the head of the finance department, but of the auditor, whose further duty it is by law and ordinance to investigate and settle the same, with the single exception of there appearing on the face of the warrant, or the bill, or the voucher, a discrepancy, an inconsistency, or suggestion of error. And defendant avers that an idea of the number of warrants he has so attested to the validity of, as already drawn, may be derived from the fact that during two years and a half thirty-nine thousand two hundred and fifty-seven of them, as defendant finds by recent investigation, have passed through his office.

And this defendant, further answering, avers that the collection of taxes in the fiscal year of 1869 amounted to the sum of $20,854,919 51, and not to the sum of $21,309,536 34, as set forth in the complaint at folio 18, and that the taxes collected in the fiscal year of 1870 amounted to the sum of $21,636,343 37, and not the sum of $23,569,127 71, as set forth in said complaint; and that the sums paid into the treasury of the city and county during the years 1869 and 1870 on account of assessment collections the sum of $7,658,855 55, and not the sum of $12,975,071 09, as set out at folio 19 of the complaint; and that during said last mentioned period there was paid into the treasury of the city and county from the general fund the sum of $5,374,314 55, and not the sum of $5,836,657 35, as set forth at folio 20; and this defendant avers that the figures of the plaintiff are untrue.

And this defendant avers that the allegation contained at folio 21 of the complaint, that during the period last mentioned the sum of $147,718,870 20 was paid into the treasury, is a marvellous misapprehension.

And this defendant avers that he is legally advised by counsel and believes that the allegations contained in the complaint between folios 27 and 29, folios 32 and 36, and more particularly of matters occurring in prior years to 1871, are irrelevant to this cause of action, and therefore, and on that account only, this defendant herein omits to controvert them.

And this defendant, further answering, avers that moneys expended for city and county purposes are derivable from two general sources:—First, from taxation in each and every year, in order to defray current expenses of the city and county government, and to pay the interest on bonds already issued, or to provide for interest on bonds about to be issued, and authorized by law to be issued, and to pay the enormous proportion of State tax which is yearly assessed upon the city and county of New York, and which source alone is called appropriation account by the law and the usage of the Finance Department. Second, to defray extraordinary and unwonted expenditures, in the nature of providing for city improvements from proceeds obtained to the treasury by the sale of bonds of the city or county at a premium varying from two to seven per cent above par, and throw upon far distant years the payment of such improvements, rather than force the immediate payment of the principal by large and excessive taxation, and to a period when, by the natural accretion of value, the real and personal property of the city and county of New York, promoted and assisted by these various improvements, will pay the principal of the bonds with the least inconvenience to the taxpayers of another generation. This second account is called special and trust account, and has no connection in law or fact with the other and appropriation account, and should not be confounded with it, as is done in plaintiff's complaint.

And this defendant, further answering, avers in this connection that almost alone of all the cities of the Union or of the world the bonds of this city or county are not issued upon the mere city or county credit and its validity, but also upon collateral of real and personal property pledged by law for the payment of said bonds, amounting as deponent is informed and believes, by the testimony of renowned experts, to the sum of $243,035,499, and that in almost every case in which bonds have been issued the proceeds have been used substantially and punctually for the purchase or permanent obtaining of something which would tangibly represent the principal of the bonds, as the aqueducts and reservoirs represent the Croton Water stock, the various public buildings, school houses, and court houses throughout the city and county of New York represent Public Education stock, Building Loan stock, and Court House stock and Market stock; and Central Park stock is represented, not only by the Central Park itself and by the immense reservoir therein erected, but by the improvement and enhancing value of property for purposes of taxation immediately in the vicinity of said Park, and also by improvements in other of the various parks and public places of the city.

Improvement stock is represented by opened streets, widened streets, boulevards and acquisitions of property, for new parks and for developing unimproved property in the suburbs of the city to meet the speedy and pressing demands made by large and influential taxpayers, including the plaintiff in this case, for the development of the upper part of the city.

And this defendant, further answering, avers that the debt contracted by the city and county of New York during the late prolonged civil war, including the bonds issued for the payment of war and riot claims, amounted to the sum of $12,033,000, for which the city has to show a commercial prosperity, springing from a cemented union and a tranquil government, and an example of loyalty, consistency and persistency for future generations.

And this defendant, further answering, avers on information and belief, that at no distant time a portion of this war debt, if not the whole of it, may be repaid to the city of New York by the general government.

And the defendant, further answering, avers that the bonds named in the plaintiff's complaint, at folio 39, have to show for them the extinguishment of embarrassing claims and entangling litigation engendered and fostered for a long series of years by complicated, conflicting and subdivided systems of local government in city and county departments, utterly independent of one another. And this defendant avers that these last-named bonds were not only duly authorized by three different Legislatures and approved by two different governors, but were contemplated by the said Legislatures to be for a very large amount, otherwise bonds would to have been authorized.

And this defendant, further answering, avers that the bonds authorized by the last Legislature (the issue or non issue of which forms the general subject matter of this action) were duly and widely discussed in all their history, effect and bearing, not only in the Legislature and in the Executive Chamber, but in the forum of public opinion by State and city newspapers of all parties, and their purport, scope and extent fully considered and understood, and that the allegations of surprise or novelty concerning them appearing in the complaint are unwarranted by facts of common notoriety.

And this defendant, further answering, avers that he is advised by counsel and believes that it is obligatory upon the city and county authorities to issue these bonds, under authority of the Legislature.

And this defendant, further answering, avers that there are in the city and county divisions of the Finance Department two general accounts kept, one called the "appropriation account" and the other called the "special and trust account." The first-named account comprehends everything that enters into the yearly taxation, and the second account comprehends all receipts of and proceeds of bonds; and that it has been usual and customary, in administering the affairs of the Finance Department, in both the city and county subdivisions, if there was an excess of cash in either the city or county treasury, to employ the same for the payment of current expenses or trust expenses, always keeping each account intact from interference with the other, and if by so doing a saving of interest could be made, but always and in every case never spending for current expenses more than was duly and regularly appropriated, or than was to be reimbursed from the collection of taxes or avails of loans and regular revenues, and always by the most methodical and systematic bookkeeping, which this defendant, from inspection of the Finance Department more recently made, avers to be in system, in regularity and in detail as perfect as the bookkeeping of the United States government or of any bank or trust institution in the country.

And this defendant, further answering, avers that whereas in the instance of the legislation of 1871, many classes and numbers of bonds are authorized to be issued, it would be manifestly prejudicial to the financial interests of the city to place all the bonds on the market at once, although the necessity for the expenditure of the proceeds of the bonds for the objects for which they are authorized was imminent at one and the same time; and defendant avers, on information obtained from the Finance Department, and on his belief, that immediately after the adjournment of the Legislature it became necessary to provide for immediate expenses under the objects specifically set forth in the complaint at folios 65 and 66—that is to say, for aqueduct alterations, City Park improvements, docks, fire telegraph, assessment and street improvement funds and boulevard improvements; and that, as the Comptroller found, he could put the consolidated bond debt as an entirety best upon the market before issuing the other, and as the payment of their interest could be levied by taxation over and beyond the amounts ordered to be raised by the two per cent law, the Comptroller did so with great advantage to the city treasury in the way of premiums, intending thereafter to issue the other bonds that were authorized by law, and for the manifest benefit and proper purposes announced in the law, and in the meantime borrowed from payments made on account of the consolidated debt bonds moneys needed for the purposes for which anticipated bonds were lawfully to be issued, because it would be some time before all the payments contemplated from the proceeds of the consolidated debt bonds would be necessary to be made. And this defendant avers, that to prohibit the issue of bonds already authorized by the Legislature, under such a state of facts as herein shown, would lay the foundation for an increased tax levy next year and possibly new legislative jobbery with the city finances, to the burden of taxpayers and manifestly mischievously and without purpose or public benefit, embarrass the city government and its credit, the cash proceeds of the consolidated debt stock having been temporarily used to provide for the expenses legislatively contemplated by the other stocks over and beyond expenses under appropriation account, and reimbursement having to be made to first named fund only, out of the proceeds of the second named fund, to wit, of bonds yet to be issued. And this deponent avers that the very moneys permitted by the injunction order served with the complaint to be nevertheless paid to laborers on parks, works and docks, are derivable from the use of the cash in the special trust account borrowed from one part of it as aforesaid and which moneys are properly chargeable against that part of the special and trust account known as proceeds of city improvement stock severally denominated at folio 65 of the complaint.

And this defendant avers, on information and belief, that the known commercial difficulties of negotiating at once large blocks of bonds, and of different classes, as has been evidenced in the recent case of the United States government Syndicate loan and of railroad corporations, is a valid, and in good faith, answer to each and all of the averments made in subdivisions 19 and 20 of the complaint.

And this defendant, further answering, avers that, when the law set up in the complaint prohibits any payment in excess of appropriations, it means excess of appropriations made for the current expenses of the government to be raised by tax and not by bonds.

And this defendant avers that the law set up in the plaintiff's complaint expressly shows that all the bonds authorized by the Legislature of 1871 to be issued are additional principal amounts to that authorized to be issued by what the plaintiff's complaint calls the Two Per Cent law, the interest of the issue of the bonds being for the current year comprehended in the appropriations, by order of the Board of Apportionment, for economical purposes, although section 7 of the Consolidated Debt Fund act expressly provides that the interest of consolidated debt bonds may be levied by the Board of Supervisors in addition to the general tax levy ordered by the Boards of Apportionment and Supervisors under the Two Per Cent law.

And this defendant further avers, that having been early informed, and indeed threatened that a conspiracy would be formed, aiming to cripple and embarrass the city government and take advantage of any mistake or error it might commit in procedure, he has, in connection with his associates in the Board of Apportionment taken, adopted and followed with the utmost technicality and particularity the procedure under the said Two Per Cent law, and he avers that all the proceedings of said Apportionment Board (which is the writ successor of all the numerous boards of estimate and apportionment thereof existing with unlimited and not, as under the Writ Board, limited powers), as well as all the proceedings and acts of this defendant as a member have been full, accurate, regular and in every respect conformable to law, and he avers that the action contemplated by the exception in subdivision one of the plaintiff's demand for judgment has been already, and weeks before this action was commenced, taken by said Board of Apportionment in the very manner prayed for in the complaint, and that all the matters asked for, to be commanded by this Court to said Board of Apportionment and to this defendant (at folio 70 and 71), have been fully, fairly and technically already complied with.

And this defendant, further answering, avers that whatever were the acts alleged to have been committed in folio 37 of complaint by this defendant, they were done and committed not by William M. Tweed, as Commissioner of the Board of Public Works, or as an officer of the city government, nor by Richard B. Connolly, as Comptroller of the city of New York and an officer of the city government, nor by this defendant, as Mayor or member of the city government, but as ministerial agents and specially denominated agents of the Legislature to carry into effect certain requirements of law specially committed to their hands; and this defendant avers that since his term of office began on the 1st day of January, 1871, or since the month of April, 1870, when he appointed heads of departments of the city government, there has not been, to his knowledge, information or belief, any suspicious, unjust, illegal, extortionate or extravagant claim or debt or demand against the city government paid from the treasury, nor any debt not first duly vouched for by appropriate departments or ordered by due process of law. And this defendant further avers that for causes not now pertinent to state, as he is advised by counsel, a necessity for large expenditures of money for improvements has been by the extraordinary developments of the prosperity of the city of New York and care for its future, thrown upon the comprehension of one year, and impossible to be made as gradual as expenditures for improvements have been made in the past history of this city.

And this defendant, denying any connection with any conspiracy or combination, as charged upon him by the plaintiff in his complaint, avers that instead of such combination the plaintiff has maliciously conspired with many other persons to seize upon this critical year in the development of the city's prosperity and of the extraordinary demand upon its finances to bring this action, and apply for the remedy therein demanded, in order to embarrass the city government in its operations and the development of its credit.

Wherefore, this defendant demands judgment against the plaintiff's capacity to bring this action, and for dismissal of the complaint in respect to cause of action also, and for all general and equitable relief. A. OAKEY HALL.

Sworn to before me this 11th day of September, A.D. 1871. CHARLES W. LAWRENCE, Notary Public.

AFFIDAVIT OF THE COMPTROLLER.

CITY AND COUNTY OF NEW YORK, ss.:—

Richard B. Connolly, being duly sworn, deposes and says that he is one of the defendants in this action, and at the time stated in the complaint in this action was, and still is, Comptroller of the city and county of New York.

And this deponent at the outset denies each and every allegation of fraud, conspiracy and malfeasance in office set out in the complaint in this action, either by direct charge or by inuendo, intimation, insinuation or otherwise.

And deponent further says that he is not now, nor has he at any time been, directly or indirectly, in any manner connected with or interested in the New York Transcript Association, the New York Printing Company or the Manufacturing Stationers' Company, or with any or either of them, or with any parties connected with any or either of them; that he has not been, nor is he interested in any manner, direct or remote, with any or either of them; that he has not now, nor has he had any interest, pecuniary or otherwise, in the New York Leader Association, or in the weekly newspaper published in the city of New York, designated and known as the New York *Leader;* that he has not, by any aid or connivance on his part, given or caused to be given to the New York Printing Company, or caused it to have a monopoly of the printing of the city and county governments, nor has the Manufacturing Stationers' Company now, nor had it, by any aid or connivance on his part, a monopoly of all the stationery supplied to the city and county offices.

Nor has this deponent, in defiance of any provision of law, acting under cover of the names of other persons, or any other manner, directly or indirectly connected himself with any association with any object or design of securing any sum or sums from the treasury of the city and county of New York, nor for any other purpose, nor has he obtained through any such means any sum from either of said treasuries.

And deponent furth says that he has not at any time openly or secretly associated himself with any other official or officials or with any other persons to set the laws mentioned in the complaint or any other laws at defiance, in order to secure large pecuniary benefits or any other benefits at the public expense; nor has he either by or through himself or in connection or association with other officials, or any other person or persons, destroyed or removed any barrier, check or safeguard which had at any time been erected by the Legislature in order to protect the treasury; nor has he at any time, either by or through himself or in connection with other officials, or any other person or persons, in the most open and flagrant manner, or in any other manner, set at defiance