STOKES.

Commencement of the Trial of the Grand Jury.

History of Grand Jury Affairs—How the Impugned Jury Was Drawn—The Call of Witnesses.

The third day's proceedings and the commencement of the trial in the case in which the legality of the Grand Jury who indicted Stokes is to be decided by a petit jury, opened at half-past ten o'clock yesterday morning. The first notable personage to arrive was the twelfth juror, sworn yesterday, Isaac H. Cohen, thus illustrating the Scriptural saying that the last shall be first. Mr. Cohen is a rather good-looking young fellow, of a decidedly Israelitish cast of countenance, and a mustache waxed out to a preternatural extent, giving him a most warlike appearance. Abe Hummel trotted in and out, and attracted scarcely less attention than his corpulent colleague, William F. Howe. Stokes' poor old white haired father was early in Court, sitting behind the chair which was to be occupied by his son.

GREETING BETWEEN FATHER AND SON.

At half-past ten o'clock precisely the prisoner was ushered into Court by Sheriff Brennan, and he at once advanced to where his father sat and shook hands with the old man in a patronizing sort of a way, after which the usual matutinal ceremony of hand-shaking with his numerous counsel all around was scrupulously gone through.

Judge Cardozo arrived a few minutes after the prisoner and took his seat on the bench.

THE EMIGRANT SWINDLER.

District Attorney Garvin said before the case of Stokes was taken up he would call His Honor's attention to that of the alleged emigrant swindler, Charles Moore, who, on the 14th of September, pleaded not guilty to an indictment for having, with three others, swindled a man out of $300 by means of the "belt trick," was bailed in $10,000, forfeited his bail, and when the prosecutor went away turned up and surrendered, and was again bailed in $10,000, after which the prosecutor was found again, and yesterday the case was sent for trial to the Oyer and Terminer. He moved that the case be sent back, with another of the same character, to the General Sessions.

Mr. Howe appeared for the defendant and opposed the motion. In the course of his remarks he said this case had attracted considerable attention from the public and the press, and one of the daily papers assailed the District Attorney for neglecting to bring the case on, whereas Judge Garvin was unrelenting in prosecuting such cases. It would be sooner tried in the General Sessions.

Judge Cardozo said it was a case that should not have been sent from the General Sessions and he would leave it to be tried there.

STOKES' PLEA FOR TIME.

Mr. McKeon then rose and said:—Before going on with the case I will make a motion that may prevent it from going on. I move that the Court direct a verdict for the defendant, on the ground that the replication of the District Attorney to the seventh plea admits the material parts of the plea; that it does not sufficiently traverse the averments in the plea as to the irregularity in the selection of the Grand Jury; that the replication is bad in form and in substance. The granting of this will only be a postponement of the trial. Counsel then read the various averments as to irregularities in the preparation of the list of grand jurors, and that the Grand Jury were selected from the prepared list, and not from the box, wherefore prisoner prays that the indictment be quashed. He then stated that the above plea having been put in, the District Attorney, finding himself unable to demur to the facts averred, did the next best thing he could by his replication. What did that replication do? It admitted all the facts in the seventh plea and took issue only as to the law alleging that the grand jurors were qualified to serve. Counsel here quoted from "Stephens on Outlines of the Criminal Law," recently published in England, pp. 171 and 188, to show that all traversable matters not traversed on the replication are to be taken as confessed—a rule extending only to facts, not matters of law, because matters of law are not traversable.

At this point Recorder Hackett entered the Court and took a seat next to Judge Cardozo.

The District Attorney replied that the objection ought to have been by demurrer. Again, the seventh plea is of a negative character—that the Grand Jury were not legally drawn; that they were not men of proper character and qualifications; that the list was not signed by the proper officers, and so on. In all such negative pleadings the prosecution or its traverse has to answer by an affirmative, or, in the words of Stephens on Pleading, "If opposed to a negative allegation the traverse will be, of course, in the affirmative."

Judge Cardozo—Better put in the evidence and I will direct a verdict according to my views of the law.

Mr. McKeon—There is a substantial reason at the bottom for the District Attorney not affirming, on his replication, that everything required by law in the organization of the Grand Jury has been complied with. He would then have to prove it. I was wanting to put the proof upon him, but he has evaded it with great sagacity. It was his duty to see that the Grand Jury was properly organized, and having replied as he does, he must now take the consequence of evading the law.

Prisoner's Counsel—We move in two ways to quash the indictment—first, that it be done by the Court and jury, and second, by the Court without the intervention of the jury.

Both motions were denied and exceptions allowed.

OPENING OF THE CASE.

Mr. Gerry then rose and opened the case for the defendant. After administering to the jury the usual dose of flattery, he proceeded to laud his colleagues all around, and informed the jury that the plea on which the present issue came before them had for its father Mr. McKeon, who, while in the District Attorney's office, earned the title of "Honest John McKeon." Counsel then gave a historical sketch of the institution of grand juries. In ancient times such juries were twelve knights. Blackstone says they were usually men of the best figure in the county. The accused has two safeguards, the Petit Jury and the previous examination of the witnesses by the Grand Jury. In the list of grand jurors were to be drawn at the mere volition of the person making it, how dangerous it would be to the accused! The right claimed by the prisoner is guaranteed in the constitutions of the United States and New York State. Unless a man is properly qualified he can never be competent to take, without perjury, the oath of the grand juror as found in the English law books:—"You shall diligently inquire and true presentment make of all such matters, persons and things as shall be given to you in charge. The King's counsel, your fellow jurors and your own you shall keep secret; you shall present no man for envy, hatred or malice; you shall leave no man unpresented for fear, favor, affection or hope of reward." It would be impossible for any one to be acquainted with all the prominent citizens of this large city and be able to keep from the list unfit persons; therefore the law provides that there shall be an examining board, consisting of the presiding Justices of the Supreme Court and of the Court of Common Pleas, the Recorder, the City Judge, with whom sits the Commissioner of Jurors. They are to make out the list from the petit jury; but they cannot travel outside it nor select from the Directory, and they must select intelligent men, of good character, and there is a property qualification of $250. The juror must be able to read and write English understandingly, that he may understand the indictment. Lastly, the list must be signed by every member of the board, and without the set signatures the law is not fulfilled. After this the Commissioner of Jurors is required to certify the list and file it with the County Clerk. Then he is to prepare a ballot from the list and place the ballot in the Grand Jury box, which shall remain in custody of the County Clerk, and then, as requisition is made from the various Courts through the Sheriff, the County Clerk draws names and sends the lists to the Sheriff. The irregularities to be proven are that two lists were presented to this Board—a list of petit jurors and a list of those desirous and anxious to serve as grand jurors. From these two lists one, marked "first list," was made out, full of irregularities; but in many instances the residences and occupations of the parties not given, and on the list were names of those exempt by law from serving. The list was signed only by the Chief Justice of the Supreme Court, from which it was fair to infer that the others could not sign it under their oath. The panel was drawn on the 13th of November, and on that panel were drawn and sworn eleven men not qualified by the requirements of the statute. Before that improperly empanelled Grand Jury James Fisk appeared with a charge of conspiracy against Edward S. Stokes, having as witnesses a man who had been in State Prison, a person against whom there is an indictment for perjury pending, and a woman said to be of questionable reputation. The case hung fire; but the minds of the Grand Jury were poisoned against Mr. Stokes, and when the case of the homicide came before them they never stopped to inquire whether the killing was willful murder, but merely rested on the evidence before them, and made no search for themselves. The Coroner's jury were men who carefully deliberated, and they refused to find that the homicide was committed with felonious intent. The Grand Jury, five days after indicting him for murder, brought in an indictment for conspiracy, they carrying out Fisk's original design to crush this unfortunate young man. To show the vindictiveness of the Grand Jury, they indicted Mr. Stokes for having, with another person, agreed to write a letter to James Fisk, accusing him of a crime, with the object of extorting money from him. They never examined the letter itself; it was enough that James Fisk said it.

Mr. McKeon here called for the minutes of the Grand Jury to show how many of them agreed on the indictment for conspiracy before Fisk's death. He wanted to expose this whole monstrous business, so disgraceful to the administration of justice.

Mr. Gerry then proceeded to say that the proceedings for conspiracy were intended to choke off the legal efforts of Mr. Stokes to recover his rights. The Grand Jury who found the indictments had among them men of such bias against the prisoner that they would be disqualified from serving on that petit jury. Why should the prisoner's life be imperrified by such men?

The Court here took a recess for half an hour.

After the recess the Grand Jury entered the court and handed in a large bundle of indictments. They were directed to proceed with whatever business is before them.

The trial of the jurors was then commenced by the call of Henry Gumberton as a witness, who testified, in reply to Mr. Gerry, that he has charge of the wheel and ballots for jurors; he produced the list signed "First List," and filed September 9, 1871; no other list has been filed since to his knowledge, and no alteration has been made in it; the figures outside, "632," is the endorsement of the number originally drawn; it is signed "Douglas Taylor, Commissioner;" he produced a book of minutes of the Oyer and Terminer, as drawn September 4, 1871; witness saw each of the fifty names drawn from the wheel into which Mr. Taylor put them; the ballots were drawn by witness; no ballots were inserted in the wheel except those on the list; he found there was one ballot in the wheel less than the list; there was no ballot for Thomas J. Barr, and the Commissioner wrote one the same day; witness has drawn every panel since the 1st of October, 1871; on October 16 he drew a panel of fifty for the Oyer and Terminer before Judge Barnard; September 11, 1871, for General Sessions, before Judge Barnard; November 13, for General Sessions, before Judge Brady; same day, for Oyer and Terminer, same Judge; December 6, for General Sessions, before Judge Cardozo; January 15, for Oyer and Terminer, before Judge Barret; same day and same Judge, panel for General Sessions, February 13, 1872, the extra panel for the Oyer and Terminer, before Judge Cardozo. On none of those occasions was the Commissioner of Jurors present, but witness was, and the Deputy Sheriff, Joel Stephens; the panels were all drawn before Supreme Court Judges while in Chambers; the Judges were attending to Court business, and did not examine the ballots; sometimes the Judge would take up the ballots; only on one occasion was the ordinary business of the Court suspended during the balloting; that was during the injunction business, and Judge Barnard suspended business to attend balloting; did not see any Judge compare the lists with the ballots.

CONSTITUTIONAL BULLDOGS.

District Attorney—What is the object of all this?

Counsel for Prisoner—They are all so many bulldogs stationed by the constitution to prevent the balloting being done by any one man.

Witness continued—The names of the jurors are always correctly given, but sometimes not the occupations; the Commissioner of Jurors was probably in the building, but not in the room at the balloting; will not swear that the ballot for P. Prusm on the last panel has his residence.

Counsel for prisoner here read the law of 1870 providing that it is the Commissioner of Jurors who shall prepare and draw the panel. It was a misdemeanor for him not to have done so, and an indictable offence for any one else to do it. Counsel read the law of 1853 making it imperative on the whole six members of the Selecting Board to sign the list, whereas only one Judge signed the list. Counsel also stated that the following omissions were made in the list filed September 9, as to names drawn in the panel, which indicted the defendant:—F. S. Wyncoop; no occupation given in the list or panel of fifty drawn. J. C. Daily; no occupation in the list, "agent" in the panel drawn. A. F. Prime; no residence in original list. W. S. Copeland; no occupation on list or panel. E. Barker, same. John Erdman; no occupation in list, "merchant" in the panel. Matthew Byrnes; no occupation. E. N. Moore, Superintendent of Roads under the city, not qualified and no occupation in the panel. John E. Alexander, no occupation; F. Hymrick, same; Robert Bagg, same.

Demosthenes Holmes was then examined. He testified as follows:—Been clerk in the County Clerk's office; have known juries drawn in the County Clerk's office; so many juries were drawn there he couldn't remember which; has copied the panel of fifty from the ballots; if there was any occupation on the original ballots he would have entered it.

The Court then adjourned until this morning.

THE END OF JACK GLASS.

Funeral of the Victim of the Nassau Street Butchery Yesterday—Affecting Scene in Duane Street Church—The Solemn Requiem Mass—Vast Crowds Attend the Services for the Dead.

The funeral of the late John Glass, who was murdered at No. 105 Nassau street, in McElroy's eating saloon, took place yesterday forenoon from the Church of St. Andrew, in Duane street. After the post-mortem examination was made by the Deputy Coroner at the Centre Street Hospital, where the deceased died, the remains were transferred to an undertaker's shop, in Pearl street, where they remained

UNTIL YESTERDVY MORNING.

The brother of the dead man, James Glass, ordered a splendid casket, in which the body was placed at an early hour yesterday morning, and removed to St. Andrew's church, where it was placed on stools, just outside the rail of the sanctuary. The casket was of cedar, with solid silver handles, and surmounted by a silver plate, bearing the inscription—

JOHN GLASS.
DIED FEBRUARY 12, 1872,
AGED THIRTY-EIGHT YEARS.

The body was followed to the church by a large crowd of the relatives and friends of the deceased. His brother James took

A SEAT NEAR THE COFFIN.

Close by him sat the dead man's widow and her relations. The women and the little daughter of the deceased were very much affected, and sobbed loudly during the service for the dead which followed. James Glass was dressed in deep mourning, and also appeared very much affected, particularly when the final blessing was given by the reverend gentleman officiating, when

HE SOBBED AUDIBLY.

Ten o'clock was the hour appointed for the requiem high mass, but some time before that the large church was crowded to the doors with friends and sympathizers. Father Henry, the clergyman who was constant in attendance on poor Glass since the night he received his fatal injuries, was the celebrant, and

READ THE SOLEMN SERVICE

in the most impressive manner. When the last blessing had been given the crowds who filled the church filed in procession up the side aisle of the church and took their last look at the remains. The gaping wounds on the head looked a little ghastly and the once strong face was very much emaciated.

SEVERAL BEAUTIFUL IMMORTELLES

were placed upon the lid of the casket by relatives and friends. When the services had closed and the features of poor Glass hidden forever from view the casket was placed in the hearse which waited outside the church, and a procession of over thirty carriages was formed, which accompanied the remains to Flatbush Cemetery.

Nearly the whole population of the Sixth ward visited the church during the morning. Warden Brown, of the Centre Street Hospital, said that before his death Glass had received the fullest consolations of religion and died a most edifying death.

The inquest will be held to-day. Costello, the murderer, is lying in the Tombs.

DOWN HILL TO DEATH.

A Coasting Party Collide with a Team—A Young Man Instantly Killed and One Fatally Injured.

BINGHAMTON, N. Y., Feb. 13, 1872.

Recent snows having made grand coasting on the hills in and about this city a novel way of enjoying it was adopted by a party of our young men and boys, the result of which has been a sad accident, by which a promising young man of this city was killed outright and others seriously injured—one fatally. On Saturday night last the party congregated near the Water Cure, on the Oak street hill, having procured the front part of a heavy "bob sled," upon which they all climbed promiscuously and glided down the hill at a furious rate, with nothing whatever to control the speed of the sled. In lieu of that, and to warn all others on the hill, two large torches were placed on the sled in front. About nine o'clock a Mr. Groff, living near this city, was on his way home with a sleigh and two horses, and had partly ascended Oak street hill when he saw approaching like the wind the two red torches, by the light of which he could see the boys crowded on the sled, yelling and shouting, and apparently unconscious of his being in their way. He at once endeavored to guide his horses to one side, but they became frightened at the torches and shouts of the boys and could not be managed. Mr. Groff comprehended the danger of the situation, but before he could get himself out of the way the sled dashed directly into the plunging horses. The collision Mr. Groff describes as being fearful. Some of the boys were thrown clear over his sleigh, several feet down the hill. The most of them, however, were piled in a heap among the wreck of the sleighs and horses. Mr. Groff at once proceeded to ascertain what and who were injured. He found Charles B. Williams in a dying condition, and he only lived a few seconds. John Messler, a boy thirteen years old, was found to be insensible. Four other boys were badly hurt and one of Mr. Groff's horses killed. A boy who had escaped was instantly despatched for a physician, and the body of young Williams and the injured boys were taken to a neighboring house, where Dr. Brooks and Dr. Thayer soon arrived. The boy Messler was pronounced fatally injured. A large crowd soon gathered around the house where the unfortunate boys were lying, and were with difficulty kept out. Great excitement prevailed in all parts of the city as the news was carried about. The Coroner's investigation will be held to-morrow night.

THE COURTS.

Interesting Proceedings in the United States Supreme, New York City and Brooklyn Courts.

The Jumel Estate Suit—Alleged Smuggling—An Attack on a Revenue Officer—Stabbing on the High Seas—A Horse Case—Alleged Warehouse Abuses—Decisions—Business in General Sessions.

UNITED STATES SUPREME COURT.

The Amount of Import Duties Levied on Living Birds and Fowls—Alleged Attempt of a Man to Defraud an Insurance Company by Insuring a Consumptive Wife.

WASHINGTON, D. C., Feb. 14, 1872.

No. 119. Reiche et al. vs. Smythe, Collector, &c.—Error to the Circuit Court for the Southern district of New York.—The question in this case was whether living birds and fowls were exempt from duty. The defendant, as Collector of the Port of New York, exacted duty under the act of May, 1866, which the plaintiffs, the importers, paid under protest and sued to recover. The Court decided that the act of 1866 repealed the act of March, 1861, and that the imports were dutiable. By the act of 1861 "animals, living, of all kinds; birds, singing and other, and land and water fowls" were exempt. The act of 1866 provides that on and after its passage "there shall be levied and collected and paid on all horses, mules, cattle, sheep, hogs and other living animals imported from foreign countries a duty of twenty per centum ad valorem." The special enumeration of "birds," &c., in the act of 1861, and "horses, mules, cattle, sheep and hogs" in the act of 1866, the Court rejected as tautological, and held that with these words struck out "all living animals" were exempt under the former act, and all living animals were dutiable under the latter; and that therefore the latter act repealed the former altogether, and the duties were legally collected. It is here insisted that birds and fowls, being exempt by special enumeration, *ex nomine*, in the free list of the act of 1861, they were not included in the term "animals" for the purposes of that act, and that by a proper construction of the latter act (1866) they will not be regarded as included in the enumeration, and are therefore not affected by it. F. Chase for plaintiff in error; B. H. Bristow and C. H. Hill for Collector.

No. 589. Union Mutual Life Insurance Company of Maine vs. Henry Wilkinson—Error to the Circuit Court for the District of Iowa.—This is a suit on a policy of life insurance taken by Wilkinson, a resident of Iowa, on the life of his wife, June 1, 1867. Mrs. Wilkinson died of consumption in 1869, and one of the defences was that she had incipient consumption when the insurance was obtained, and that the fact was suppressed by the applicant. Another defence was that she was seriously injured in 1862 by falling from a tree, and that this fact was also suppressed with fraudulent intent. The two questions were submitted to the jury, and they found that the insured did not have incipient consumption when the policy was procured and that she was not seriously injured by the fall in 1862. The judgment was accordingly for the plaintiff below (defendant here), and it is here urged that the Court erred in its rulings upon the evidence on the trial and that the verdict found was the result of such rulings. The case was submitted on the printed briefs. Gilmore & Anderson and George P. Write for plaintiff in error, G. W. M. Craig for defendant in error.

UNITED STATES CIRCUIT COURT.

The Estate of Madame Jumel.

Before Judge Shipman.

The further hearing of the case of George Washington Bowen vs. Nelson Chase was resumed yesterday.

THE DEFENCE.

At the sitting of the Court further testimony was given in relation to Joseph F. Perry, who had testified as a witness on the part of the plaintiff, that he was born in Providence, R. I., in 1794; that he was acquainted with the Ballous and Betsy Bowen, and that he was aware of the fact that Major Ballou had an illegitimate child by Betsy. Joseph F. Perry had further testified that he was married in Boston, to Abigail Leavitt, and the records of the town of Woodstock, Conn., and a family Bible showed that he was born there in 1807.

The nature of the evidence offered yesterday, on the part of the defendant, was to show that this Joseph F. Perry had not been born in Providence; that he had not resided there at all, and that his birthplace was Woodstock, Conn., as was sworn to in the preceding day's proceedings by several witnesses.

Yesterday Thomas Danforth, of Boston Highlands, where he had resided for fifty years, deposed:—I knew Joseph F. Perry between 1840 and 1850; he lived in Vernon street, Roxbury; where he lived before that I cannot say; when I first knew him I did not know where he lived; when he lived in Vernon street his house was within one of the house on the corner of Shawmut avenue; a Mr. Stackpoole lived in that corner house; I think I lost sight of Joseph F. Perry about 1850; I did not know his family; I do not think I ever saw his family; I never knew him to live in any other place; I never knew any person to live in Roxbury by the name of Joseph F. Perry other than the one I have testified about.

Cross-examined—I came here at the request of Mr. Logan; there was no arrangement made for my compensation in coming here; I will swear that Joseph F. Perry lived in Vernon street in 1846; I cannot say where he resided after he left Vernon street.

John Putnam, 18 St. James avenue, Boston, a dealer in spring beds and bedding, testified that he had resided in that city altogether fifty-three years. He knew a man of the name of Joseph F. Perry; he should think it was in 1837 that Perry came to his house with respect to hiring rooms. Witness continued—I let him some two or three rooms in my house; I think that was in 1837 or 1838; he lived in my house from one to two years—not very long; I know his wife's name was Leavitt; I cannot tell what her first name was; my impression is that he was married on 1st of January, 1837 or 1838; he was married in my house; I was present at the wedding; I think he was married by his minister, Mr. Boise; Joseph F. Perry went from my house to live in Vernon street, Roxbury; he lived there some years, probably six or seven, but I did not keep trace of him after he left my house; he was a carpenter—a stair builder.

Cross-examined—The girl whom Joseph F. Perry married worked in the New England type foundry.

Mrs. Nancy Pratt deposed—I have lived at Boston Highlands for thirty-nine years. Joseph F. Perry came to my house to see the lady "he was waiting on."

Counsel on both sides seemed to be at some loss to understand this last expression of the witness, when

Judge Shipman kindly came to their assistance and said, "That is the technical term in New England for 'courting.'" (Laughter.)

Witness continued—Joseph F. Perry was married in 1838 or 1839; his wife's name was Abigail Leavitt; she died on the 26th of September, 1861; I saw him two weeks after his wife died; I do not think I have seen him since.

Some further testimony having been given, the Court adjourned until this morning.

UNITED STATES COMMISSIONERS' COURT

Alleged Resistance to a Revenue Officer.

Before Commissioner Shields.

The United States vs. John Talbot.—The defendant is charged with having in the harbor of New York resisted a revenue officer in the discharge of his duty. It is alleged that Talbot was attempting to carry on shore from a vessel a quantity of smuggled cigars, when the attention of a revenue officer was attracted to the matter. The latter interfered, whereupon he was, as the complainant avers, obstructed by Talbot, who, it is charged, belongs to a gang that make it a practice to smuggle goods in the harbor and deal out blows of bricks and stones to revenue officers whenever these officials attempt to put a stop to these illegal transactions. The defendant was held in $3,000 bail for examination.

Alleged Stabbing on the High Seas.

The United States vs. Charles Waitson.—Yesterday a sailor named Thompson, belonging to the American ship H. H. Wright, attended before Commissioner Shields for the purpose of testifying to the fact that on the 3d of December last, while the vessel lay at Palermo, in Sicily, he was stabbed in two places in the back and also bitten in the nose by a fellow seaman named Charles Wattson. An inquiry was had into the matter by the American Consul at Palermo, who forwarded the accused to this country in the ship J. S. Pearson, while the witnesses to the alleged offence came in another vessel. Wattson's examination will take place in the course of a few days.

SUPREME COURT—TRIAL TERM—PART I.

Verdict in a Horse Case.

Before Judge Van Brunt.

Frederick Johnson vs. Webster King.—The plaintiff left a mare with the defendant, and the latter, as alleged, without his knowledge, got her with foal, the sire being Gray Miller, a celebrated Hambletonian horse. The defendant denied the foal, and said if there was one it died. It was proven, however, that he said he would not take $500 for the foal. The plaintiff wanted $1,500 for the foal, alleging that this sum had been paid him for a foal from the same mare. The jury gave him $750 damages.

COURT OF OYER AND TERMINER.

Trial Transferred to the General Sessions.

Before Judge Cardozo.

The People vs. Moore.—The trial of Moore, charged with being implicated in swindling emigrants, was yesterday transferred to the Court of General Sessions. Meantime the prisoner's bail, $10,000, remains the same.

SUPERIOR COURT—SPECIAL TERM.

Decisions.

By Judge Monell.

Mitts vs. Dayron.—Order granted.
Schenck vs. Bartels.—Motion denied.
Frenche vs. Wheeler.—Order granted.
Wheeler vs. Frenche.—Same.
Kolman vs. Young.—Same.
Morton vs. Olmstead.—Same.

By Judge Barbour.

Circle vs. Circle.—See memorandum with Clerk.

COURT OF COMMON PLEAS—SPECIAL TERM.

Decision.

By Judge Larremore.

James vs. Pike.—Application granted. Order to be settled on motion.

COURT OF GENERAL SESSIONS.

Before Judge Bedford.

Yesterday, in this Court, Emma Blair was tried and convicted of an assault with a dangerous weapon with intent to do bodily harm to Emma Saunders, by stabbing her in the face with a knife on the 5th of January. His Honor having been informed by the police officer that the prisoner had been previously arrested for stabbing and stealing sent her to the State Prison for three years.

Charles Hamber, indicted for feloniously breaking into the premises of George Kleinziger, 11 Battery place, on the 10th of January, pleaded guilty to an attempt at burglary in the third degree. He was sent to the State Prison for two years and six months.

John Holland, jointly indicted with Hamber, pleaded guilty to the same grade of crime, and was sentenced to the State Prison for one year.

John Miller, a youth, pleaded guilty to petty larceny from the person, in stealing on the 6th of January a silver watch from David Fitzgerald, and was sent to the Penitentiary for one year.

ACQUITTALS.

William R. Brooks, a colored waiter, charged with stealing jewelry and clothing from the house of Mrs. L. D. Shears, 33 Irving place, was tried and acquitted.

John H. Prior, indicted for stealing a gold watch and chain valued at $300 from Maud Ingolsby, was also promptly acquitted.

FIRST DISTRICT COURT.

Alleged Abuse of the Warehouse System.

Before Justice Quinn.

Beach vs. Gardner.—The extortions of the general order stores, which have just received exposure by the investigations of the Senate Committee of Congress, are not the only ones to which importers are subjected in reference to bonded warehouses. The excessive charges for "transportation storage" are very frequent causes of complaint, and recently many suits have been brought by aggrieved merchants to recover moneys illegally exacted. One of these has just been tried in the First District Court, before Judge Quinn. Herbert Beach, an extensive importer of earthenware, had a consignment of about fifty crates of crockery by the ship Star of Hope. He sent his carman to get them, who carted all but seventeen crates, when he was told by the delivery clerk of the vessel that no more goods would be unloaded that day, and went away. The delivery clerk, however, had already sent word to John W. Gardner, a transportation storage warehouse man, to be in readiness to receive these goods. The seventeen crates were sent to Gardner's store that evening, and in two days after Beach sent his clerk to get them, giving him $35 to pay charges. It was found that Gardner's charges were $78 for cartage, storage and labor, including an item of about $11 for insurance and commissions, and he would not deliver the goods without full payment. The money was paid under protest, as Beach had sold the goods and wanted them immediately. On the trial a large number of warehousemen were examined as to the customary charges for storage, and it was contended on the part of plaintiff that Gardner's charges were quadruple what they should be, and the latter's own witnesses showed that they were double what was ordinarily exacted. It was shown that no money had been paid for insurance or commissions.

Defendant said he had no recollection that plaintiff protested to the payment when it was made, while the latter testified positively that he did protest.

Justice Quinn, in deciding the case, first determined that the charges were too high, and should not have been more than $37 25. The question then was whether the payment made by the plaintiff to obtain a release of the goods held by him as warehouseman was a voluntary payment or one made under protest. If made under protest such portion of it as was extortionate and in excess of the fair and reasonable charges to which a warehouseman is entitled may be recovered back, otherwise the plaintiff would be driven back to his action under the claim and delivery process provided by the Code. The Court cited the case of Harmony vs. Lougham et al. (2 Kernan, 99), among others. The evidence of the plaintiff, in his opinion, showed that the payment was not a voluntary one, but was made under protest. The doctrine in the cases cited was applicable to the facts of this case, and entitled the plaintiff to judgment for $44.

Another Warehouse Case.

Rorke and Others vs. Charles H. Rahe.—This case (also tried before Justice Quinn) is of a like nature to the preceding one. The Messrs. Rorke are importers of glassware, and had 250 cases consigned to them from Belgium on the ship Joana Kepeler, Captain Rahe. Plaintiffs received notice at twenty minutes past four P. M. July 20, from the vessel's consignees, that she had arrived, and one of them went immediately to the pier, where he arrived at six minutes past five. On the way he saw three truck loads of his goods going to the storehouse of Mr. William D. Gaul. He prevented any more of his goods being taken there, but had to pay Gaul $62 40 for storage for the goods that had been taken. The consignees of the vessel had advertised that the goods must be taken before five o'clock. The owners sued Captain Rahe for the money paid by them for storage, and the Court gave judgment in their favor.

COURT CALENDARS—THIS DAY.

Supreme Court—Special Term—Held by Judge Ingraham.—Nos. 68, 88, 75, 70, 121, 122, 124, 125, 126, 127, 130, 131, 133, 134, 15, 42, 64, 136, 137.

Supreme Court—Chambers—Held by Judge Barnard.—No. 108.

Supreme Court—Circuit—Part 1—Held by Judge Van Brunt.—Nos. 1093, 141½, 89, 839, 965, 1065, 885, 467, 1119, 1053, 1129, 1131, 1133, 1133½, 1135, 1137, 1139, 1143, 1145, 1149. Part 2—Held by Judge Brady.—Same calendar as yesterday.

Superior Court—Trial Term—Part 1—Held by Judge Freedman.—Nos. 129, 1265, 1339, 1411, 1185, 1675, 843, 1493, 969, 1161, 1231, 1471, 1279, 1475. Part 2—Held by Judge Sedgwick.—Nos. 1061, 1068, 540, 760, 260, 974, 382, 1010, 736, 624, 1072, 1078, 324, 848, 240.

Court of Common Pleas—Equity Term—Held by Judge Larremore.—Nos. 173, 177, 184, 185, 186, 181. Part 1—Held by Judge J. F. Daly.—Nos. 1065½, 1034, 1138½, 710, 506, 976, 652, 764, 893, 980, 1102, 68, 2059. Part 2—Held by Judge Loew.—Nos. 1152, 787, 1164, 1170, 1182, 36, 1227, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236.

Marine Court—Trial Term—Part 1—Held by Judge Spaulding.—Nos. 7731, 7901, 7765, 7785, 7874, 7576, 7835, 7543, 7810, 7775, 8022, 8024. Part 2—Held by Judge Shea.—Nos. 7688, 7827, 7780, 7891, 7877, 7609, 7391, 7766, 7928, 7555, 7856, 7953, 7994. Part 3—Held by Judge Curtis.—Nos. 7627, 8224, 8612, 8627, 8713, 8734, 8821, 8828, 8816, 8838, 8833.

BROOKLYN COURTS.

UNITED STATES CIRCUIT COURT.

The Result of a Whiskey Raid—Informers' Fees—Decision of Judge Benedict.

The United States vs. Fourteen Barrels of Distilled Spirits.—Upon the distribution of the proceeds of the forfeiture decreed in this case, as question has arisen as to who is entitled to share in the distribution as the informer, two persons have presented claims and have submitted testimony taken before a Commissioner, from which this Court is now to ascertain whether either, and if so which of these two, is to be adjudged entitled to an informer's share by reason of having first informed of the cause, matter or thing whereby the forfeiture of the fourteen barrels of distilled spirits, proceeded against in this action, was incurred. These fourteen barrels were first discovered by John P. Short, an assistant assessor, on the 12th of January, 1871, during the progress of what the witness calls a "raid" upon the illicit distillers of the Fifth ward. When discovered they were lying covered with boards in an old alleyway, adjoining an old distillery on Marshall street. This distillery had not been running for some time prior to the raid, and there was no still in it at the time, but only two old mash tubs, nearly falling to pieces. The evidence does not disclose, nor was it known at the seizure, where the spirits were distilled or whence they came. The presence of those barrels in the alleyway is not shown to have been known to any one prior to their discovery by Short, who had been directed to seize the old distillery, which was supposed to be running, and while about that work discovered those barrels in the alleyway adjoining. The barrels were without the legal stamps and marks, and Short thereupon at once seized them and rolled them out on the sidewalk, where a formal and official seizure of them was afterward made by Deputy Collector Patterson. The absence of stamps rendered the property liable to forfeiture, and it has accordingly been for that cause condemned by default. It is unnecessary here to restate the restrictions and limitations implied in the Revenue act of June 30, 1864, as amended by the act of July 13, 1866, under which these claims to share as informers are made. My opinion in respect thereto has already been announced in the case of the United States against Chavsel (6 Blatch., 321), and I proceed to consider these claims in accordance with the views there expressed. I will examine first the claim of Jerome B. Wass. This claim is based upon the fact that prior to the raid Wass had informed Assessor Jourdan of the existence and exact locality of certain illicit distilleries in the Fifth ward, and among them the old distillery in Marshall street, near which these fourteen barrels were found. This information, as Wass claims, was first given to Jourdan by him for the purpose of having the distilleries seized, and led to the organization of the raid referred to, during which these barrels were found. Assuming for the present that information of the running of an illicit distillery given for purpose of having it and its contents forfeited, followed by a forfeiture of the distillery and of distilled spirits, the product of the distillery, found on it, would entitle the person giving the information to be considered the informer in respect to the spirits as well as the distillery so found, although the presence of any spirits be unknown until the seizure is made. Still, it must be considered that the evidence here fails to make a case where Wass can be adjudged the informer as to these fourteen barrels. The information which he claims to have given related to illicit distilleries, and he lays stress on his information respecting the old distillery on Marshall street; but the difficulty is that no connection is shown between the old distillery or any distillery as to which he informed and these barrels. They were not found in, or, so far as the evidence shows, produced by any distillery as to which he gave information. If the proceedings to condemn the spirits had gone to trial, and the evidence on that trial confined to the facts respecting which Wass here claims to have informed, no forfeiture could have been decreed. The forfeiture of the spirits was incurred by reason of facts wholly unknown to Wass until after their seizure by Short. It therefore cannot be that Wass first informed of the matters and things whereby the forfeiture was incurred. The statute gives the reward only to the person first informing of certain matter—namely, those whereby the forfeiture is incurred. The other claim is made by Assessor Jourdan, who states that, prior to receiving any information on the subject from Wass, he, by employing an agent at his own expense, ascertained the existence and locality of certain illicit distilleries in the Fifth ward, and among them the old distillery on Marshall street; that he organized the raid on those distilleries, and sent Short to seize the one on Marshall street; that Short informed him of the discovery of the fourteen barrels in the alleyway, and that he first informed Deputy Collector Patterson respecting them, in order that they might be officially seized by Patterson, who was a deputy collector. In regard to the information possessed by Jourdan before the raid the same objection exists which has been stated in considering the claim of Wass. Prior to the discovery of the spirits by Short neither Wass nor Jourdan had any information in respect to any fact which would entail a forfeiture upon these spirits. In regard to the information claimed to have been given by Jourdan to Patterson, as I understand the evidence, the information acquired by Short was imparted by him to Patterson at the same time that it was to Jourdan, Jourdan, Wass, Dutcher and Patterson being all present when Short reported what he had discovered. Under such circumstances Jourdan cannot be said to have first informed Patterson. But, further, these spirits were already in custody. A military force was on duty to secure the custody of any unlawful matter found. These fourteen barrels had been found and taken into custody, and their forfeiture was certain from the moment of their discovery and seizure by Short without any further information from any one and without any additional action on the part of Jourdan or Patterson; for the District Attorney could, and, under the circumstances, doubtless would, have been bound to adopt the seizure made by Short under cover of the military on duty for that purpose, and the forfeiture thus been enforced. The simple statement by Jourdan to Patterson, a deputy collector, that the barrels had been taken and were then held by Short, made under such circumstances, even if it were the original source of Patterson's information in the premises, did not contribute in any substantial way to the forfeiture of the property, and does not entitle Jourdan to reward as informer. There is, beside, an additional difficulty with Jourdan's claim, so far as it rests upon any information given by him to Patterson, and leading to a seizure by Patterson, which is, that the information filed by the District Attorney, and upon which the forfeiture in question has been decreed, does not rest the demand for a forfeiture upon the seizure made by Patterson, but upon a seizure made by Gordon L. Ford. There has been an abandonment of the seizure of Patterson, and no evidence is produced showing that any information possessed by Jourdan contributed in a substantial way to the seizure by Ford, upon which the forfeiture decreed in this case has been based.

In accordance with these views I must disallow both the claims which have been presented.

BROOKLYN COURT CALENDAR.

City Court.—Nos. 172, 136, 15, 24, 45, 186, 187, 188, 189, 191, 192, 193, 194, 195, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207.

COURT OF APPEALS CALENDAR.

ALBANY, Feb. 14, 1872.

The following is the day calendar for February 15 of the Court of Appeals:—Nos. 85, 86, 161, 51, 6, 131, 133, 164.

BROOKLYN AFFAIRS.

Burned to Death.

Yesterday afternoon Mary Zeller, fifteen years of age, and residing at 600 Flushing avenue, died from burns received at the house of a friend in Kent avenue the day previous. Her clothes took fire from the grate.

Fatal Embankment Accident.

By the caving in of an embankment yesterday afternoon at the corner of Ann and Beaver streets, Williamsburg, Jacob Hansen, a native of Germany, thirty-three years of age, was crushed to death. Hansen resided at No. 204 Scholes street, where he leaves a widow and two children.

The Blood of Panormo.

Yesterday Officer Mullen, of the Fourth precinct, was again before the Police Commissioners on a charge of not being on his post the night of the Panormo murder. Commissioner Briggs was in favor of relieving him from further duty, but Mayor Powell said they had better give him another chance. He was fined ten days' pay.

A Detective Oversteps the Mark.

Detective Willis was before Mayor Powell and Commissioner Briggs yesterday, to answer a charge of having conducted himself in a manner unbecoming an officer. Detective Riggs arrested two women for grand larceny in January, and it is said Willis interested himself in their behalf and they got off. Willis acknowledged that he did speak