MAYOR HALL.

The Proceedings Yesterday---All Serene at the Opening---All Turbulent at the Close.

A BOMBSHELL EXPLODES IN COURT.

The Great Plasterer, Garvey, Appears.

Effect of the Unexpected Apparition Upon the Uninitiated, Defendant's Counsel and the Public Generally.

WHAT GARVEY KNOWS ABOUT TWEED.

Andrew J. Gives His Testimony About That Little Bill.

Defendant's Battery, "Objection," Again Opens and Silences the "Garvey" Battery for the Day.

The Action To Be Resumed This Morning.

NINTH DAY.

Yesterday was the ninth day of the proceedings in the case of the People of the Empire State against Mayor Hall, the Chief Magistrate of the Empire City. No public trial ever held in this city has created a deeper or wider felt interest than this. To the casual spectator or witness of the proceedings this interest perhaps would not be manifest, unless, indeed, he noted the array of able counsel that is engaged on the side of the people and for the defence. The court room is not besieged each morning by crowds such as are drawn together by a morbid curiosity excited by the trial of some tragic actor on the criminal stage of actual life. The class of society always present on such occasions are noticeably absent, and from no portion whatever of the spectators which every day fill the court room of the General Term of the Court of Common Pleas, where the trial, taken from the General Sessions, is being held, can any other expression, or act, or look be drawn than that which reflects an earnest and intelligent interest in the proceedings. In further proof that the trial is not of the sensational stripe, and that the Mayor is not such a hero as he might himself imagine, the court room has not been once graced by the presence of one of the fair sex.

The earlier proceedings yesterday were more than usually dull up to the hour of recess, and when the Court reassembled after the brief adjournment there were fewer persons present than at any other stage of the trial. But the counsel for the prosecution had a surprise in reserve, which, no doubt, they deemed would be the

COUP DE GRACE

to the defence, or, at all events, drive them from their lines of intrenchments in the way of objections, and compel them to meet the prosecution on its merits in the open field.

The unexpected call for and sudden appearance of

ANDREW J. GARVEY,

the great Swiss traveller, and erstwhile plasterer of the new County Court House, was indeed a bombshell which the combined legal acumen and resources of counsel for the defence were not prepared for. But when "Andrew" was called it was thought to be a joke, or as near something of the sort as it was possible for the junior counsel (Peckham) to attempt in the face of the Court and in the presence of his superiors in the prosecution. But when Peckham called a second time, and, not waiting for the cabalistic "third and last," Andrew J. did indeed appear, not as an apparition, but only reduced a little in corpulency, it was seen that the solemn Peckham was serious, and was as guiltless of a joke on that occasion as he ever was in his life. Of course Andrew on the stand was the cynosure of all eyes, while his own were directed to the frescoed ceiling above his head, which he himself had placed there, and, oh, ingratitude of republics had been the cause of his exile and his present position. Andrew is not the Andrew of old. He has grown thin, and has more of the "snow of winter" or of the Swiss mountains, on his head than when he skedaddled. He was very nervous, and when answering the questions put to him spoke like a man out of breath. However, he was not put through a very severe catechising ordeal, as counsel for the defence, after they got over their first surprise, again opened their battery of arguments, silencing completely the

GARVEY BATTERY

of the prosecution till the hour of adjournment.

When the Court was assembled a hope of shortening the trial was presented by a suggestion of Mr. Stoughton that objections should be passed on by the Court without discussion until the final summing up, but Judge Daly was unwilling to rule on any question without thoroughly understanding it, so as to have, by any misunderstanding on his part, a fatal exception.

Quite a discussion arose as to how this difficulty should be obviated, Mr. Tremain being quite willing to leave the defence any legal rights. Mr. Stoughton finally announced that they would not discuss any exception unless the Court desired them to, and added an eighth to Mr. Burrill's seven exceptions.

Neither Mr. Tremain nor Judge Daly was quite willing to accept Mr. Stoughton's suggestion.

Chief Justice Daly classed Mr. Burrill's objections in two classes—first, that the warrant was not good as secondary evidence to show the original claim, and, second, that it was not good as primary evidence, as not tending to show that the claim should not have been allowed—in other words, to the effect of it as evidence.

The Court overruled the objections, and admitted the warrant in evidence.

The warrant has already been printed in full.

The examination of the witness

WILLIAM COPELAND

was then proceeded with.

The prosecution offered in evidence the entries on pages 363 and 364 in the Audit Book No. 9.

Mr. Burrill objected that the prosecution could only put in evidence the entries in regard to this particular warrant.

Mr. Peckham—Very well; we only offer those particular entries in evidence.

Mr. Burrill—One moment. The evidence being thus restricted, we object further that Mr. Lynes having testified that the entry was simply a copy of the warrant, it is not proper evidence. The warrant itself covered the ground, so far as it can be covered.

The Court—The evidence was, "the warrant gives all the information that the Audit Book does."

Mr. Tremain—He stated that the number in the margin was taken from the claim. The number in the book, as Your Honor will perceive, is altogether different from the number of the warrant. He never made the number in the book until he had the voucher before him.

The Court—That is sufficient to make it admissible.

Mr. Burrill and Mr. Tremain then each read copious extracts from the stenographer's notes, after which Mr. Burrill objected that this evidence was not admissible, since the book was not under the control of the defendant and never had been.

The Court ruled against the objection.

Finally, both parties agreed to take evidence for the present and merely note objections, reserving the argument upon them until the witness had concluded his testimony. Mr. Peckham then read the entry as follows:—In the column under the head Audit No., are the figures 90, and the line reads "to whom," A. J. Garvey, for labor and materials for the new Court House, December 16, 1869, amount $41,562 42; number of warrant, 2,507.

Mr. Peckham offered to let the jury themselves see the entry.

Mr. Burrill objected to the book being shown them, but consented that the entry itself should be copied off and handed to them.

The Court ruled that the book itself could not be shown.

The witness then continued.

Q. At the close of your examination you stated that you had examined some of the vouchers of Mr. Garvey that were on file in the Comptroller's office. State how many you examined and what amount of examination you gave them.

Mr. Burrill—Is this offered as secondary evidence of the contents of these lost papers?

Mr. Peckham—Yes, sir.

The witness—It would be impossible to state the number.

Ex-Recorder Smith—I raise an objection to this evidence. The indictment is for a specific offence.

The Court—I understood that by mutual agreement all objections were to be reserved.

Ex-Recorder Smith—Well, I waive the matter, by the advice of my associates, but it is a course I cannot approve of individually.

The witness—The vouchers of Garvey I examined had the certificate of the Board of Audit, together with the order of the Comptroller to draw the warrant attached to them.

Q. By whom was the certificate of the Board of Audit signed? A. By the Mayor, Comptroller and the President of the Board of Supervisors.

Q. State the names? A. Hall, Connolly and Tweed.

Q. Do you know their handwriting? A. Hall's and Connolly's only, as they write a peculiar hand that I could easily distinguish.

Q. Was there the County Auditor's stamp on the vouchers? A. Yes, sir; I cannot say the exact words it contained, however.

Q. Look at the stamp on that paper and say if it is the same? A. Yes, sir.

Q. Read it? A. City and county of New York, Department of Finance—examined and found correct; County Auditor; and then there is a space to be filled in with Mr. Watson's signature.

Witness then identified the blank for the outside covering of the bill, the blank for the certificate of the Board of Audit, the blank for the order of the Comptroller to draw the warrant, and the blank of the warrant itself.

Q. Were those blanks filled up in the cases you examined—the audit certificate and the order for the warrant? A. They were filled up and signed in every case I examined.

Q. Was the name of Mr. Tweed written on any other part of the papers except at the bottom of the audit certificate? A. Yes, sir; in some cases the name was written across the face of the bill.

Q. Was this form of affidavit attached to the bill filled in?

Mr. Burrill—I object that it is not competent to show the contents of the particular documents covered by the indictment by evidence showing the nature and contents of other vouchers.

The Court—I thought all these objections were to be reserved.

Mr. Peckham—I think a rule once accepted ought to be enforced. The prosecution seem inclined to let us go on until some question arises likely to pinch them, and then they assert the right to reopen the objection and argue it all over again.

The Court—I think it would be better to let the evidence go on and then discuss it as a whole when its bearing and nature are clear, rather than raise objections on each separate piece of evidence as it is presented.

The question was suspended for a while, and Mr. Peckham proceeded.

Q. Was the receipt filled up? A. Yes, sir, with the proper signatures.

Q. Was there a single instance in all the vouchers of Mr. Garvey that you examined where the voucher did not contain all the papers you have referred to and identified? A. No; the papers were all the same way—those that I saw.

Q. Was there any circumstance that caused you to make any particular examination of these vouchers?

Mr. Burrill objected to the question.

The Court—He has stated the fact, and the accuracy of his inspection is wholly immaterial on his direct examination. It would become a proper question on the re-direct examination, if any doubt of the fact were raised by the defence.

Q. What was the condition of the blank affidavit?

This was the question which had given rise to a previous objection and was argued at some length until the recess.

The examination of this point was briefly continued after the recess without eliciting any matter of interest.

The first grand sensation of the trial was then created by Mr. Peckham calling, in his stentorian tones,

"ANDREW J. GARVEY.

Is A. J. Garvey in court?"

There was a murmur of expectation and mystification among the audience, which increased when there was no immediate response.

After about half a minute, however,

"ANDY"

himself appeared upon the scene, looking much thinner and older than when he and his wagon were last familiar sights to New Yorkers. All eyes were directed towards him, and from the moment he appeared on the stand till the adjournment the people passed into the court room until it could hold no more, and the corridors and approaches which so often resounded to Andy's tread were blocked up. Andy kept his eyes directed to the ceiling, as if he was pointing attention to his frescoes as a claim upon the gratitude of his countrymen—as Manlius when arraigned in the forum pointed to the capital he had saved. The application, however, did not apply, and Andrew had to tell all he knew about Tweed and the Board of Audit.

HIS EXAMINATION.

Q. Where do you reside? A. No. 7 East Forty-seventh street; have resided there since October, 1870; was forty-three years of age in December last; am a builder, plasterer and decorator; have carried on that business here in this city since I was twenty-one years old.

Q. Are you acquainted with the defendant? A. Yes, sir; have been on speaking terms with him about six years.

"DO YOU KNOW MR. TWEED?"

Q. Do you know Mr. Tweed? A. Yes, sir; have known him for twenty years.

Q. And Mr. Connolly? A. Yes, sir, for ten years.

Q. Had you business claims against the city in 1870? A. Yes, sir.

Q. Is that your signature on this warrant? A. Yes, sir.

Q. Did you receive the money? A. Yes, sir, and deposited it the same day in the bank.

Q. What bank? A. The Broadway Bank; the amount deposited was larger than that.

Q. You say the deposit was larger than that? A. Yes, sir; I had other warrants cashed on that day, amounting in all, including this deposit, to $166,961 26.

Mr. Burrill objected that the witness ought only to answer except in regard to the present warrant.

The objection was sustained by the ruling of the Court.

Q. Where did you first receive this warrant? A. In the room directly under this—the chamber of the Board of Supervisors.

Q. Had you previously to that presented an account against the county? A. Yes, sir.

Q. Is that a copy of the account? A. Yes, sir; it is a very fair copy of it.

Q. In whose handwriting was the account? A. In mine.

Q. In whose handwriting was the calculation in red ink of the interest? A. In that of Mr. Watson or Mr. Lynes, probably.

The following is a copy of the bill referred to:—

The county of New York to A. J. Garvey, 58 Third avenue. December 16, 1869—For labor and materials for the New Court House:—

For plaster work, 2,795 days' work, at $5	$13,975 00
For laborers, 2,913 days' work, at $3	8,739 00
For scaffold builders and riggers, 532 days, at $5	2,660 00
For cartage of scaffold, material and rubbish	2,580 00
For 1,275 days, ornamental workers, at $5	6,375 00
For material for plastering—sand, lime, plaster, marble dust, &c	5,479 48
For use of scaffolding, ropes, ties, nails, &c	425 00
	$40,233 48
Interest (in red ink)	1,329 94
Total	$41,562 42

Q. Is this also (presenting a paper, of which the foregoing is a copy) in your handwriting—this exhibit? A. Yes, sir, including the red ink.

Q. To whom did you present that account? A. I gave that account, with some other bills, to E. A. Woodward, Deputy Clerk of the Board of Supervisors.

Q. How long have you known Woodward? A. About seven years.

Q. How long had he been Clerk of the Board of Supervisors? A. All the time I knew him and longer; I presented the bill to him in the room of the Clerk of the Board of Supervisors.

Q. How many bills did you present to him at that time? A. Three others—four in all.

Q. How long afterwards did you receive the account? A. About two weeks; it might have been a little longer than that.

Q. At the time you received the warrant was it attached to other papers? A. Yes, sir; there were three other papers—the certificate of the Audit Board and Mr. Connolly's order for the warrant.

Witness identified blank forms produced as being similar in character to those he had seen filled up and attached to the warrant.

Q. Were any other papers signed at the time you received the warrant—from whom did you receive the warrant? A. From Woodward.

Q. Did you give a receipt for this bill? A. Yes, sir.

Q. Is that the form of the receipt? A. Yes, sir; the blank is the same.

Q. You gave a receipt in that form, signed it and gave it back in return for the warrant? A. Yes, sir.

Q. These papers, were they all pinned together? A. Yes, sir—I believe so; the warrant was pinned on and the others might have been mucilaged on or attached in some way; I left the balance of the papers with Woodward.

Q. Is this account an honest and just account? Objected to by Mr. Burrill.

Mr. Tremain said he proposed to show that the whole of the account, with the exception of perhaps thirty-five per cent of it, was fictitious and fraudulent, having no foundation in justice, honesty or truth.

The defence hesitated a few moments, and the prosecution impatiently exclaimed, "Is there any objection?"

Mr. Burrill—Oh, yes.

Mr. Stoughton said one would suppose that a person who had read this indictment and was familiar with criminal law or the purpose for which criminal prosecutions were instituted could not be serious in offering evidence of this character. He would not say that the effort to make it, however, was unexpected after the extraordinary opening they had been indulged with. What was this supposed offence, as charged by the indictment and defined by law? The indictment was framed under section 38 of the Revised Statutes, which read that every wilful neglect of duty in cases where it had been enjoined by law upon any public officer and where no special provision for its punishment had been made should be accounted a misdemeanor. The indictment was procured under the supposition that there was a certain duty enjoined upon the defendant by the act of May 4, 1870. On page 878, section 4, volume 1 of the session laws of that year, it was provided that "all claims incurred previous to the passage of this act shall be audited by the Mayor, &c." His Honor would observe that the duty which it was supposed came within the provision of section 38 imposed upon the Mayor, in connection with two other officers, the duty of auditing these claims. All these claims having probably been passed and allowed by the Board of Supervisors, it could easily be understood how it happened that the Mayor and his associates considered that their duties were substantially ministerial. All claims so passed by the Board of Supervisors became fixed claims, that Board being the only competent tribunal that had power to say what claims were liabilities. But the Mayor's duty was judicial, and for the exercise of that he was as irresponsible to the law as His Honor was for the exercise of his duties on the Bench. The nature of the duty thus imposed, then, was judicial, and, in the absence of fraud or malice, he was as independent—sitting in that position and relation—as His Honor sitting on the Bench, and subject to no action on the part of the people except in cases of fraud or malice. The indictment charged the Mayor with having wilfully, unlawfully and corruptly neglected to audit certain papers which had been lost. That constituted the entire first count, and the second count, in his opinion, recited the same offence exactly, with the exception of certain circumstances which were mere surplusage. The words "unlawfully and corruptly" might be excluded, as they added nothing to the offence, and were not averments, but conclusions. There was no allegation that the claim was unjust or fictitious, or that the Mayor had reason to suppose so, but simply that he wilfully neglected and refused to audit certain accounts. There was no allegation of fraud or complicity with any human being, or that the claim was not a just liability of the county. It had already appeared that this account was audited. This duty was judicial. Could His Honor say upon what proof the auditors were to allow or disallow claims? What would that be but creating an offence in the mind of the Court and defining it instead of leaving it to the statute?

The Court—This argument is addressed to me on the presumption that the claim was audited?

Mr. Stoughton said that, although that was not exactly the argument now, it would be pretty soon, in generally reviewing the case. Nothing was better settled than that no judicial action of any officer would come within the statute unless fraud or malice were alleged. Suppose this indictment had been preferred by Mr. Garvey himself, that the Board had refused to hear his claim. That would have been competent proof under this indictment provided always that under this fourth section the Mayor could be charged with an offence under section 38 of the statutes, and this question he would argue later. Even in that case His Honor would have said that the Board were acting judicially, and had full discretion to say upon what they would or would not act. It would be monstrous to allow testimony like that now offered to be received. If this claim were fraudulent that was utterly inconsequential in deciding whether the claim had or had not been audited. In courts juries frequently allowed unrighteous and unholy claims, and yet no stain was reflected upon them or upon the Court. It would be necessary, in case of fraud being alleged against the Mayor, to show that the Mayor had, knowing the claim to be fraudulent, audited and passed it.

The Court—Allow me to say that in 6th Mordaunt it is laid down that at the common law any public officer is indictable for misbehavior in office.

Mr. Stoughton said there must have been some doubt about it, or the statute to which the indictment would not have been passed.

It being now late Mr. Stoughton postponed the remainder of the argument on his objection until to-day, and the Court adjourned till eleven A. M.

Mr. Garvey was surrounded with a group of quondam friends and acquaintances, but seemed somewhat nervous and agitated, and could not be enticed into an indiscreet conversation. To all questions he returned polite, but monosyllabic answers, and quietly withdrew from the scene which his presence had so greatly enlivened.

THE COURTS.

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

Further Adjournment in the Jumel Estate Case—Alleged Forgery of Bonds—A Patent Suit—Violation of the Internal Revenue Law—Business in the Court of Oyer and Terminer—A False Note—Decisions—Business in the General Sessions.

UNITED STATES SUPREME COURT.

The Collision Between the Steamers Pluto and St. John on the North River—How the Government Collectors are Paid.

WASHINGTON, D. C., March 7, 1872.

No. 131. Steamboat St. John vs. Hasbrouck—Appeal from the Circuit Court for the Southern District of New York.—This was a case of collision between the barge Ulster County, owned by the appellees, and the St. John, the property of the New Jersey Steamboat Company, on the Hudson River, in November, 1864. The barge was in tow of the propeller Pluto, and the answer alleged that the propeller was chargeable with the collision, as she did not have a competent crew nor a competent pilot; was out of the proper track of boats going up the river, the course of the propeller; did not heed the signal of the St. John and did not stop or back when the danger of a collision became apparent. The District Court found the St. John at fault for not having a proper lookout and for attempting to pass to the eastward, or on the starboard side, of the propeller and her tow instead of passing to the right. The decree was accordingly for the libellants. It is is here insisted that the observer of the forward lookout had nothing to do with the collision, that the Pluto could not have been discovered by such a lookout sooner than she was, and that the manœuvring of the steamer was justified. The point of the negligence of the Pluto, made below, is also insisted upon here. C. Jones for appellant, C. Donohue for appellees.

No. 129. United States vs. Ballard.—Error to the Circuit Court for the Northern District of Ohio.—The question in this case was whether or not Ballard, as Collector for the district of Cuyahoga, Ohio, was entitled to retain for his own use, without paying it into the Treasury, moneys received by him from the owners of steamers and from engineers and pilots, under the act of 1852, by virtue of the act of June, 1864. The Collector insisted that by this law he was to have a fixed salary of $1,000, and in addition thereto the fees collected, provided the aggregate compensation of salary and fees should not exceed $2,500; and that he was therefore entitled to retain the sums demanded by the Department, as his compensation did not exceed the limits named. The Court so found, and the judgment was for the defendant. The government here urges that the special fees demanded by the Department, collected under the act of 1852, were by that act to be accounted for to the United States, and that they are not, therefore, included among the fees which the Collector may retain. A. G. Riddle for Ballard, B. H. Bristow for the government.

No. 128. Davenport vs. Lamb et al.—Appeal from the Circuit Court for the District of Oregon.—This is a controversy concerning the title to block G in the city of Portland. A partition suit was instituted by Lamb et al., in which Davenport was a defendant, he being the owner of the property, as claimed, by a direct line of conveyances from the owners of the Portland Land Claim, and he was the only defendant who answered. Upon the trial the decision was in favor of the plaintiffs, except as to a small proportion of the property which was adjudged to Davenport. It is here insisted that the Court erred in taking jurisdiction to try the adverse claims of Davenport in a suit of partition, and that he should have been adjudged to be entitled to the whole of the property. W. W. Chapman for appellant; George H. Williams for appellees.

UNITED STATES CIRCUIT COURT.

The Petit Jurors Discharged Until Monday Next.

Before Judge Benedict.

Yesterday Judge Benedict took his place upon the bench at the usual hour. There being no criminal case ready for trial the petit jurors were discharged until Monday next.

THE JUMEL ESTATE CASE.

If Mr. Palen, one of the jurors empanelled to try the case of George Washington Bowen vs. Nelson Chase, and who was sick when the cause was last called on for hearing before Judge Shipman, be well enough on Monday next to occupy his seat in the jury box the matter will be continued; but if then Mr. Palen should remain indisposed. Judge Benedict will, in all probability, proceed with the clearing of the criminal calendar. In the event of the Jumel case going on Judge Benedict cannot hold his Court in the Federal Building; for there is no accommodation for him in that edifice, which is very badly suited for judicial purposes. There are but two court rooms for the judges. Judge Blatchford uses one of these, and any Judge sitting in Circuit occupies the other, as Judge Shipman has done during the trial of the Bowen and Chase case; so that Judge Woodruff, who is hearing causes without a jury, is obliged to dispose of them in his chambers—a not very comfortable apartment, in the rear of the building.

Distillery Bonds—An Alleged Forgery.

A case, showing the following circumstances, was disposed of before Judge Benedict:—David Ellan had been a distiller in this city. He gave a bond as security that the business of his establishment would be conducted properly and according to law. The name upon the bond was that of Jacob Fischel. The collector of the district in which the distillery was situate alleged that certain irregularities as to distillation had been committed by Ellan, and proceeded against Fischel to recover the amount of the bond. Fischel declares that, though his name is upon the paper, he never signed it, and that the signature purporting to be his is a forgery. It is further stated that the person who forged Mr. Fischel's name cannot now be found. The decision of the Judge is in favor of Fischel.

A Patent Suit.

Judge Woodruff was occupied during the greater portion of the day in hearing a continuation of the argument in the patent suit of Cyrenus H. Wheeler vs. The Clipper Reaper and Mower Machine Company.

UNITED STATES COMMISSIONERS' COURT.

Charge of Selling Washed Revenue Stamps.

Before Commissioner Shields.

The United States vs. F. A. Goodall.—The defendant, as already reported in the HERALD, had been charged with selling, or offering for sale, washed revenue stamps to Morris S. Sullivan, an officer of the Secret Service Department, through whom the present accusation has been made. Goodall alleges that he got the stamps from a person who cannot be found at present, and as the production of this person is deemed of importance for the defence the Commissioner allowed an adjournment for that purpose if it is possible to effect it.

COURT OF OYER AND TERMINER

Arraignment and Pleas for Indictments for Murder and Manslaughter.

Before Judge Ingraham.

This Court met at eleven A. M. yesterday. The only business transacted was receiving the pleas of various parties indicted for murder and manslaughter. Most of the pleas were made through their respective counsel, Wm. F. Howe and W. F. Kintzing.

Jeremiah Evans, charged with the murder of Roger Betts, by stabbing, on the 19th of November last, plead not guilty.

John Costello, indicted for manslaughter in the alleged killing of John Glass on the 22d of last January, the injuries resulting in death having been inflicted at the dining saloon, No. 199 Nassau street, plead not guilty.

Daniel M. Marrow, indicted for manslaughter in the alleged killing of Charles Mass on the 9th of last January, also plead not guilty.

Patrick Malone, against whom a similar indictment was found for the alleged killing of Thomas O'Connor on October 9, 1871, made a similar plea.

John Morrison and Robert Perkinson, jointly indicted for manslaughter, in the alleged homicide of Michael Fitzpatrick on December 17, 1871, entered a like plea.

John Peck, charged with manslaughter, through the alleged killing of Victor Clemens on December 13, 1871, was the last party arraigned. He entered the same plea of not guilty.

After the above arraignments and pleas the Court adjourned to next Monday.

SUPREME COURT—TRIAL TERM—PART I.

Verdict of Damages Against Wreckers.

Before Judge Barrett.

John H. Doty vs. John H. Baxter.—In this case, which was an action for damages for non-fulfilling a contract in raising a sunken vessel, the particulars of which have been published in the HERALD, a verdict was yesterday awarded giving the plaintiffs $575 83 damages.

SUPREME COURT—CHAMBERS.

About the Custody of a Child.

Before Judge Ingraham.

In re Frederick Miller.—Between the parents of the relator, who is six years old, a suit for divorce is pending, the father bringing the suit. Upon their separation the father retained custody of the relator and the mother of their other child, a daughter. Application was made on behalf of the mother for the custody of the boy, on the ground of alleged unfitness of the father, by reason of his violent temper, to have the care of a child of such tender years. The Court refused to interfere in the case, as such interference might prejudice the proceedings in the divorce suit.

Decisions.

Chamberlain vs. Ostrander.—Motion denied.

Comstock vs. Martin.—Motion granted. Reference ordered to Murray Hoffman.

Sloan vs. Martin.—Same.

Franklin Manufacturing Company vs. Holman.—Motion granted.

Todd vs. Fortune—Same.

In the Matter of the Receivership of Bowling Green Savings Bank.—Referred to A. C. Bradley.

Ely vs. Parker.—Motion granted.

SUPERIOR COURT—SPECIAL TERM.

Decisions.

By Judge Sedgwick.

Metzler vs. Fritz.—Motion granted on payment of $15 costs.

In the matter of the application of Catharine Carson.—Order granted.

Hagan vs. Ryan.—Same.

Kimball vs. Williams.—Same.

COURT OF COMMON PLEAS—SPECIAL TERM.

Alleged Mercantile Frauds.

Before Judge Robinson.

Stout vs. Wilson and Leith.—Counsel applied for an order of arrest against the defendants upon affidavits setting forth that the plaintiff was a merchant in Barclay street and Leith applied to him to sell goods upon a promissory note of defendant, Wilson, for the sum of $2,306, representing that the note was a legitimate business note of the firm of Breithaupt & Wilson and given to him for value; that he sold the goods upon this representation. The affidavit further stated that Wilson had given Leith promissory notes to the amount of $5,000 to $10,000, to raise money by the purchase of goods, and then selling them at less than cost price; that Wilson was at 25 Thomas street, where the goods were stored, and saw the plaintiff's property there, which consisted of canned goods; that, also, the notes were protested at maturity, and that Wilson is now insolvent. The charge was one of fraud and conspiracy. An order was granted.

Decisions.

By Judge Robinson.

Van Vliet vs. McCunn.—Defendant adjudged in contempt and ordered to pay $100 fine and $146 84 costs and expenses.

Anna M. Burrell vs. William H. Burrell.—Report of referee confirmed and divorce granted to the plaintiff, with the custody of the children.

Wambold vs. Peters.—See memorandum.

COURT OF COMMON PLEAS—PART 2.

Assault and Battery Case Turned Out of the Common Pleas.

Before Judge Van Brunt.

Last term an inquest was taken before Judge Loew, when the jury rendered a verdict for plaintiff for $3,000 for injuries sustained by him in Jones' Wood in June, 1870, at the hands of the defendant, a lager beer saloon keeper. The inquest was subsequently opened, and the case came on for trial before Judge Van Brunt yesterday, when His Honor said that from his experience of assault and battery cases he did not intend to try a case of that description in this or any other Court, and that it was in the discretion of the Court of Common Pleas to send all such cases to the Marine Court under the statute.

MARINE COURT—CHAMBERS.

Decisions.

By Judge Joachimsen.

Boyden vs. Metropolitan Fire Extinguisher Company.—Demurrer overruled, with leave, &c.

Wise vs. Kearney and Scott vs. Morasso.—Motions to vacate. Attachments granted.

Simonds Manufacturing Company vs. Gregory.—Motion to open default granted on terms.

Wolbach vs. Moritz.—Motion granted.

Goodhart vs. Manz.—Motion to open default granted on terms.

Drake vs. Balle.—Judgment for plaintiff for $443 96.

Strange vs. Lynn.—Judgment for plaintiff for $415 21.

French vs. Mendelsohn.—Judgment for plaintiff for $565 51.

Schwarf vs. Goldstein.—Motion to vacate attachment denied.

Crary vs. Simonson.—Judgment for plaintiff for $334 83.

Miles vs. Mittnacht.—Judgment for plaintiff on demurrer, with leave, &c.

Storpe vs. Coon.—Motion to open default granted on terms.

Doré vs. Atwell.—Judgment for plaintiff for $61.

Hirschfeld vs. McElroy, Lowenthal vs. Rosemann and Rooney vs. Michels.—Motions granted.

COURT OF GENERAL SESSIONS.

Before Recorder Hackett.

A MOTION BY MR. HOWE QUESTIONING THE LEGALITY OF THE TWO BRANCHES OF THE GENERAL SESSIONS—"MOTHER ROACH," AN ALLEGED PICKPOCKET, ON TRIAL.

The first case presented for consideration by the jury yesterday in this Court, by Assistant District Attorney Stewart, was a charge of larceny from the person against Mary Ann Leonard, alias Mother Roach. Before the trial proceeded Mr. Howe rose and said that he did not wish to impede, but to further, the administration of justice by interposing an objection to the case proceeding before that Court as at present organized, for the reason that the present term of the Court of General Sessions for this county was being held before Hon. Charles P. Daly, one of the Justices of the Court of Common Pleas, on the trial of a very high official. His Honor (the Recorder) was possibly aware that a bill was now before the Legislature for the purpose of sanctioning two branches of this Court being in session at one time: and, therefore, it was doubtful as to the power of this Court to hold two branches or there would not have been the necessity for legislative interference in that respect.

The Recorder overruled the motion.

Lydia Lyons was the complainant against Mary Ann Leonard, and stated that, on the 7th of February, she took a Broadway stage at the Staten Island ferry, and when she reached Prince street found that her pocketbook, containing $45 was stolen. The prisoner sat near her, and no other person could have taken it but her. An hour after her pocket was picked Miss Lyons returned to the Battery and found Mother Roach there and had her arrested, but no money was found upon her. Before the jury left the court room there were eleven for conviction and one for acquittal, and later in the afternoon they had not agreed. The Recorder discharged them from the further consideration of the case, and directed the Clerk to summon 100 jurors for Monday to try the case.

ATTEMPTED BURGLARY IN A CRIMINAL LAWYER'S HOUSE.

Charles Woods, John Wilson and James Duffy, youths, were placed at the bar charged with attempting to break into the residence of a well known criminal lawyer, on the 7th of February.

District Attorney Garvin stated to His Honor that the complainant, overflowing with the milk of human kindness, pleaded for mercy in their behalf.

The Recorder said that the youthful criminals showed great audacity in conceiving the purpose of committing a crime upon the premises of a great criminal lawyer; yet His Honor, being assured that it was their first offence and that they were respectably connected, suspended judgment.

AN ACQUITTAL.

Frederick Schmeckpepper was tried upon a charge of receiving four boxes of candles which were stolen by two boys, Harrison and King, from the store of Abraham Jackson, with a guilty knowledge. That essential fact not being established the jury rendered a verdict of not guilty.

Thomas Nolan, a youth, indicted for assaulting Joseph McBarron on the 29th of February and robbing him of a gold chain, pleaded guilty to petty larceny from the person and was sent to the State Prison for five years.

BURGLARIES.

Henry Cowen (a boy), who attempted to burglariously enter the premises of B. M. Clark, in East Forty-ninth street, on the 6th of February, pleaded guilty and was sent to the Penitentiary for six months.

George Bramer offered a similar plea, the indictment charging that on the 23d of January he, with a confederate, broke into the store of Friedman & Lantezing, 14 Warren street, and stole $1,350 worth of knives. He was sent to the State Prison for two years and six months.

Dennis Brady, charged with being concerned in robbing Albert Bornonsky of a watch and diamond pin in a liquor saloon, corner of East Broadway and Clinton street, was convicted of assault and battery. As there were mitigating circumstances the Recorder sent Brady to the Penitentiary for three months.

James Wiley, who, in conjunction with two confederates, broke into the premises of Theodore Linnington, No. 216 Front street, on the night of the 2d of February, and stole $90 worth of cigars, pleaded guilty to an attempt at burglary. Two years and six months in the State Prison was the sentence.

John Williams, jointly indicted, in whose possession two boxes of the stolen cigars were found, was sent to the Penitentiary for six months.

James Walker, who was charged with forging a check for $24 in order to procure medicine for a sick relative, pleaded guilty, and, on motion of the Assistant District Attorney, the Court suspended judgment.

BROOKLYN COURTS.

SUPREME COURT—SPECIAL TERM.

The Agricultural College Land Case.

Before Judge Gilbert.

William Woodward vs. Ezra Cornell.—This case was reported in the HERALD a few days since. It is an action to recover $116,000, alleged to be due plaintiff in connection with locating Agricultural College lands in the West, which had been given to the State of New York by an act of Congress, then transferred to the Cornell University and subsequently purchased by the defendant Cornell, who, as claimed, employed plaintiff to assist him in locating the lands.

The trial of the case was set down for Orange county, but on Monday last counsel for defence moved to have the place of trial changed to Tompkins county, on the ground that the greater number of witnesses lived there. Yesterday Judge Gilbert rendered a decision denying the motion, with $10 costs.

Decisions.

Ranson McEwen et al. vs. William Wright, Jr.—Motion to change place of trial denied. Ten dollars costs to abide event.

Antonio G. DeGorgorza vs. Knickerbocker Life Insurance Company.—Circuit case settled.

John Rinn vs. Thomas Riley.—Motion to vacate order to file security for costs denied, without costs.

Maria L. J. Smith vs. Rebecca C. Davison et al.—Motion to set aside sale denied, with $10 costs.

Owen Mosier vs. Godfred Grossman et al.—Motion to change venue granted; $10 costs, to abide event.

Edward Doyle vs. William C. Anderson.—Demurrer sustained; judgment for plaintiff, with costs.

Emma B. Bruce et al. vs. Marietta M. Fuller et al.—Complaint dismissed; $150 allowance.

CITY COURT.

A Court Room Wanted.

Before Judge Neilson.

Since the reorganization of the City Court, increasing the number of judges to three, increasing the jurisdiction of the Court, &c., business has increased so rapidly that the Court has been divided into two parts, held in separate rooms. The second part has been held in the County Court room when that Court was not in session. Frequently when Judge Moore has been holding County Court his room has been wanted by Judge McCue to hold the second part of the City Court in; consequently the business of the latter tribunal has been delayed. This was the case yesterday morning. Judge Moore was engaged in the County Court, and there was a large calendar of the City Court to be disposed of by Judge McCue. Judge Neilson was engaged in the First Part in the suit of the widow Jane Madden against the Staten Island Ferry Company.

Judge Neilson called the calendar for the day and found that there was a large number of cases ready for trial. All parties, including Judge McCue, were in attendance and ready to proceed, but there was no court room to be had, and Judge Neilson, therefore, announced that the cases must stand over until Monday next. Perhaps the Judge, while making the announcement, perpetrated a joke when he said that it had been suggested by a member of the bar that they should endeavor to obtain possession of the Long Island Club House (the headquarters of the democratic club on Clinton street) to hold Court in. The Court added, however, that some gentlemen seemed to doubt the propriety of doing so!

BROOKLYN COURT CALENDARS.

SUPREME COURT—CIRCUIT.—Nos. 49, 97, 98, 99, 100, 101, 102, 103, 104, 105, 107, 109 to 117, inclusive.

CITY COURT.—No calendar for to-day, in view of the fact that the Westfield case will occupy the balance of the week, and, as there is no room for Judge McCue to hold Part 2 in, the following is Monday's calendar:—Nos. 31, 35, 47, 51, 52, 54, 55, 56, 58, 67, 73, 74, 89, 94, 96, 97, 98, 99, 100, 101, 102, 105, 108, 109, 110, 111, 112, 114, 115, 117, 118, 119, 122, 123, 125, 127, 128, 129.

JUSTICE AND THE JUDGES.

The Judiciary Committee in Session—Investigation of the Charges Against Judge Barnard—Winding Up of the Case Against Judge Cardozo.

The investigations that are carried on in parlors H and G of the Fifth Avenue Hotel by the Judiciary Committee are becoming decidedly monotonous, as nothing so far has been brought to light of any startling nature against the judges who have been arraigned before this learned body. It was given out on Wednesday evening that the case against Judge Barnard would be commenced at noon yesterday, and at that hour the accused and his counsel, Rufus Andrews, presented themselves before the committee and announced their readiness to take into consideration the several charges that had been preferred. It appears there are about half a dozen charges against Judge Barnard, the first of which accuses him of having formed a corrupt association with Fisk, Gould, Sherman and Fields and others, for the purpose of gaining possession of the Albany and Susquehanna Railroad; and that with this object in view the Judge had granted injunctions upon motions of Sherman and Fields, who had not been empowered to act in the matter by the executive committee. This appears to be the most important charge, and Messrs. Sherman, Stirling, David Dudley Field and Dudley Field were subpœnaed as witnesses. Another of the charges is that Judge Barnard has made use of abusive language from the Bench to members of the Bar and others.

At noon yesterday everything was in readiness to proceed with the examination of the charges, but unfortunately none of the witnesses appeared, and consequently business remained in *statu quo* until their arrival. Judge Barnard and his counsel, Rufus Andrews, promenaded around, naturally a little chafed at the delay. On questioning the Judge as to his opinion of the charges brought against him, he said he was perfectly satisfied with the whole matter, and thought that the conduct of the judiciary should always be subject to the most searching examination if there was the slightest proof of any corruption, and added that it was the bounden duty of any citizen who had any proofs of corruption against a member of the judiciary to appear and make affidavit to the same.

It was nearly three o'clock before a witness arrived; but at last Mr. Dudley Field put in an appearance, and the committee immediately went to work upon the Albany and Susquehanna charge. Mr. Rufus Andrews was the only counsel for Judge Barnard present, as his associate, Mr. Fancher, is on the sick list. The committee kept hard at work upon Mr. Dudley Field until five o'clock P. M., when they adjourned the further investigation of the charges against Judge Barnard until ten A. M. this morning. The result of their labors yesterday appear to have been rather unsatisfactory, as Mr. Dudley Field completely upset this charge, proving that the firm he represented had authority to act as counsel by an agreement with the Executive Committee of the board of directors of the railroad and also by the written instructions of the same Executive Committee. Several witnesses have been subpœnaed to appear to-day on the Judge Barnard charges, and among them are Fred. A. Lane, Henry L. Barker and James Coleman.

The committee met last evening at half-past seven to conclude the examination of witnesses in the Judge Cardozo investigation. Mr. C. E. Jordan, a gentleman connected with the legal profession, was first put on the stand and examined to some length as to some documentary evidence tending to rebut the evidence produced on the part of the Bar Association. Judge Cardozo was present, accompanied by his counsel, Judge Fullerton, and associate, Mr. Owens. Shortly before nine P. M. a Mr. Yelverton was called, but was only kept a few minutes.

Mr. Sparks, Clerk of the Court of General Sessions, was also present with a large batch of bail bonds and recognizances of people discharged on habeas corpus after having been convicted in the Court of Special Sessions. This testimony was produced on behalf of Judge Cardozo, to show everything had been transacted in a perfectly regular manner. The Judiciary Committee sat until shortly before eleven P. M. It is understood that the investigation of the charges has now terminated and the committee will devote their attention to-day to Judge Barnard.

THE REAL ESTATE MARKET.

Feeling Among Dealers Respecting Its Future.

Effect of Past Operations on Fifth Avenue and Madison Avenue Property.

THE LOGIC OF FIGURES.

Who Constitute the Heavy Buyers and How They Operate.

SOLID MEN TO THE FRONT.

Projected Improvement on the Corner of Broadway and Dey Street.

Napoleon and New York Real Estate.

Particulars of the Sale of Park and Boulevard Lots To-Day.

The article in yesterday's HERALD respecting a new movement in real estate created quite an excitement in real estate circles, and was a principal subject of discussion among the crowd collected at the sale of the Boulevard and Park lots, as well as in brokers' offices generally. The weight of opinion was with the correctness of the conclusions there set forth, and many a reader contributed his quota of individual knowledge to sustain our judgment. Others contended that while a period of renewed activity, beyond question, was close at hand, in which former seasons of excitement and heavy operations would be repeated, yet that the market was in an inchoate state as regarded this result, and had not yet recovered the needed spring and buoyancy to justify full confidence. In other words, the effect of the recent stagnation is still upon the market, and checks the speculative ardor which would otherwise stimulate free investments. This is certainly true to a great extent, judging from the record of public dealings; but there are numerous transactions daily occurring in private, in which the heaviest operators are engaged as principals, which furnish the needed assurance to justify our anticipations.

FIFTH AVENUE PROPERTY.

The single case of the sale of the lot on the corner of Fifth avenue and Eighty-fifth street on Tuesday to W. P. Douglas, for $47,500, affords an opportunity to illustrate this. Mr. Douglas has since been offered an advance of $5,000 upon his purchase. The lot adjoining this, on Fifth avenue, sold in November, 1869, for $17,000, and $45,000 has only recently been refused. This rapid appreciation is but the natural result of the competition among buyers that has prevailed in the interval to get hold of this kind of property, a competition that has been quietly carried on, so that when a public sale takes place the advance upon former prices is startling. Among the heaviest buyers of this kind of property for years has been Griffith Rowe, who is said to own or control almost the entire Fifth avenue front from Fifty-ninth to Ninetieth street. The influence of these investments is also visible in the rapid appreciation of

MADISON AVENUE PROPERTY

and property adjacent thereto, extending all the way from Forty-second to 100th street and bounded by Fourth and Fifth avenues. The improvement of this district has been almost marvellous within the last couple of years. Whole blocks of houses have been erected on the cross streets, while on the line of Madison avenue the improvements are of the most stately character. For lots on the corner of Madison avenue and Seventy-fourth street, which sold respectively three years ago at $14,000 and $13,000, they are now asking $30,000. The inference is that the same men who by their operations gave the impetus to the Fifth avenue and neighboring property have now transferred their operations to the Boulevard. The appreciation east of the Park having reached a limit beyond which there is not much profit to be looked for without improvement, they have directed their attention to the west side as offering a fresh field for successful speculation. By speculation here we do not mean speculation in the sense of the Stock Exchange, based upon fictitious values, but speculative investment looking to a future rapid appreciation. Among

THE HEAVIEST REAL ESTATE OPERATORS,

whose presence in the market is the certain indication of genuine activity, are John H. Power, Amos R. Eno, L. J. Phillips (Mr. Phillips is said to be a heavy buyer on the west side), George H. Peck, Benjamin Cohen (both Mr. Peck and Mr. Cohen bought freely at recent west side sales); Griffith Rowe we have already mentioned, whose great specialty is Fifth avenue property; W. P. Douglas, Adon Smith, John D. Lewis, S. M. Peyser, Sylvester Brush and J. Blumenthal. These are only a few, however, of the number who give real estate the preference in their investments, and are exclusive of the numerous operators in west side property who were more or less associated with the "ring." The future of the investments made on that account present a somewhat puzzling problem to real estate men, but while the improvements projected by its members, and upon which they based their purchases, go on without interruption, it can remain a problem without detriment to the interests of other real estate owners. We have also omitted the name of a once distinguished investor in New York real estate,

THE EX-EMPEROR NAPOLEON III,

who, it has been often stated, owns or owned considerable property in this city. The ex-Emperor on one occasion assured the correspondent of the HERALD that such was not the case, but in view of the distress of mind he was then suffering from it is quite possible he may have forgotten the piece referred to below.

INCIDENT OF A LATE TRANSACTION.

It will doubtless be recollected by the readers of the HERALD that Dr. Evans, an American dentist, became a warm personal friend of the ex-Emperor, then in the zenith of his power. So close and confidential became the intimacy that the Emperor entrusted Dr. Evans with the onerous task of investing large sums in American property. Among the real estate purchased in this city for the Emperor was a piece of property situated on the northwest corner of Dey street and Broadway, the Broadway front extending about fifty-five feet, with a depth in Dey street of 150 feet. This estate cost the Emperor $480,000, the purchase being effected in Dr. Evans' name.

Of late the Western Union Telegraph Company has been hard pushed for room in its present headquarters, and several attempts have been made by the management to obtain another and a more expansive location. In order to be as close as possible to the new Post Office a bid was made some time ago for the Astor House. The offer was not accepted. Finally the company resolved to purchase the Broadway and Dey street property of the ex-Emperor. The handsome sum of $840,000 was paid to him, through Dr. Evans, for this property, thus diverting into Louis Napoleon's private purse the very satisfactory margin of $360,000.

On the 1st of May the building at present on the property will be torn down to make way for the new headquarters. The promised structure will probably be one of the most splendid, as it will be one of the most complete, buildings on this Continent. It will be the great telegraphic heart of the country, where the electric current will pulsate night and day from and to the extreme ends of the earth. The announcement by the company of its intention has caused a brisk demand for office room in the vicinity.

THE SALE OF PARK AND BOULEVARD LOTS

yesterday, belonging to the estate of Washington M. Smith, deceased, under a decree in partition of the Supreme Court, attracted a large attendance to the salesroom, comprising many of the prominent real estate men of this city, who watched the progress of the sale with much interest. The terms were somewhat varied from the usual course, the sale being made from a marked map upon which was set down opposite to each lot the amount of cash that would be required of the purchaser independent of the price offered. In the subjoined report of the sale both figures are given.

The first lot put up was one on Seventy-sixth street, north side, about the middle of the block, between the Boulevard and Tenth avenue, 25x102.2, which sold for $5,800; $4,500 cash. Following this the Tenth avenue lots were put up. The one on the corner of Seventy-seventh street, 25.6¼x90, being the southwest corner, brought $6,650; $4,500 cash. The adjoining lots, south on the avenue, brought $4,600 and $4,500 respectively; $4,000 cash on each.

The six lots on Seventy-seventh street, south side, beginning ninety feet west of Tenth avenue, each 25x102.2, sold as follows:—The first two nearest the avenue, $4,750 each, and the others successively for $5,100, $5,600, $6,200 and $7,350; $4,500 cash on each.

The Boulevard lots sold as follows:—

Corner of Seventy-seventh street and the Boulevard, gore shape, 26.4½ front, 110.4 on Seventy-seventh street, $18,100; cash $10,000. Lot adjoining, same front, mean depth 100.6, $13,400. Lot adjoining, mean depth 93 feet, $12,356. Lot adjoining; mean depth 87.5, $12,100. The cash payment required on each of these was $8,500.

The buyers were John B. Dyer, J. O. Wright, W. W. Backus, J. Blumenthal and J. R. Smith.

The other transactions at the Exchange were unimportant.