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MURDERERS ARRAIGNED

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BUSINESS IN THE OTHER COURTS.

In the Court of General Sessions yesterday James Cusick, notoriously known as the "Eighth ward man eater," was put on trial for an assault upon one Isaac Robinson. The complainant wished to withdraw the complaint but this Recorder Hackett would not permit. The case went to the jury, but as both the complainant and the defendant were insulting to each other, Cusick was acquitted of the charge. Cusick was then sentenced upon a previous conviction of assaulting a young woman and sentenced to ten months' incarceration in the Penitentiary.

In Part 2 of the General Sessions the counsel for Greenthal, whose conviction by Judge Bedford's "extended jury" was reversed by the General Term, claimed that his client having already been put in jeopardy could not be tried again. He therefore withdrew the plea of "not guilty" already made. The full argument on the case is to be heard to-day.

The case of Patrick Carroll, who is charged with attempting to obtain money from the city and Corporation of New York by fraudulently representing himself as Patrick Burns, a laborer on the "big pipe" works, was then tried, but the Court adjourned before the prosecution had closed their case. This is a test case, and if it goes against the defendant many other "dummy laborers" will be prosecuted. The Court was crowded with small fry politicians, many of whom are said to be apprehensive of the consequences of a conviction in this case.

Yesterday ex-Senator William M. Graham, who is charged with having, while acting in the capacity of President of the Wallkill National Bank, embezzled $100,000, the property of that institution, was arrested on a bench warrant issued out of the United States District Court. The bail had been fixed at $50,000. Counsel for the defendant asked for a reduction of the bail, and this matter is now before the District Attorney for advisement. The accused, pending the decision of the District Attorney, has been committed to the custody of the Marshal.

In the United States Circuit Court yesterday Judge Woodruff delivered his judgment in the case of De Brimont vs. Penniman. M. De Brimont had married in Paris a daughter of the defendant, who died after the birth of her first child. The question to be determined was, whether the law of the United States would uphold a judgment of the French Courts obliging the defendant to pay an annuity to the plaintiff, as his needy son-in-law. Judge Woodruff's decision is in favor of the defendant.

An important decision was rendered yesterday by Judge Fancher, of the Supreme Court, in the suit by Livermore, Clews & Co. against Richard Bainbridge. The original suit, commenced ten years ago, was to recover some thirty-five thousand dollars, alleged to be owing the plaintiffs by the defendant through operations in stock speculations on his account. A referee reported the plaintiffs, however, as owing the defendant $120,000, and motion was made to set this report aside. Judge Fancher grants the motion. His decision, embodied in a lengthily written opinion, is given in full in our law reports.

Among the many suits instituted against Mr. W. M. Tweed was one on behalf of the city to compel him to transfer to the city, without payment, certain property which he is said to have purchased in Putnam county for the purpose of erecting thereon a storage reservoir for the Croton water. The case came up yesterday before Judge Van Brunt, holding Supreme Court—Special Term. Counsel for Mr. Tweed demurred, on the ground that the complaint did not state sufficient cause of action, and that it united two causes of action. An order was entered sustaining the demurrer.

In a suit brought yesterday, in the Common Pleas, before Judge J. F. Daly, to recover $20,000 damages against the Third Avenue Railroad Company, on account of the loss of a leg through being pushed off one of the cars of the company by a driver, the complaint was dismissed. The ground of dismissal was a recent decision in the Court of Appeals exempting the company from liability in a similar case, and holding the driver responsible.

Yesterday William H. Burke, alias George Moorehouse, of 34 Amity street, was held in $1,000 bail by Commissioner Shields to await the action of the Grand Jury on a charge of having been concerned in what is called the "sawdust swindle"—to wit, sending circulars through the United States mails to parties offering to sell them counterfeit money on liberal terms, and, in reply, forwarding cigar boxes stuffed with sawdust. A recent act of Congress makes it a punishable offence to use the mails in furtherance of a scheme of fraud.

THE SCANNELL-DONOHOE KILLING.

Continuation of Testimony for the Defence—The Question of Insanity to be Relied Upon—No Medical Testimony as Yet.

The trial of John Scannell for the shooting of Thomas Donohoe in the Court of Oyer and Terminer was resumed yesterday before Judge Brady. The proceedings in the case have been conducted with singular order from the first, Judge Brady's instructions to the Court officials to prevent all rush and disorder at the doors, and to allow only so many to enter the room as can be accommodated with seats and with such standing room as may not interfere with quiet ingress and egress of those admitted, being rigidly, but courteously carried out.

At the opening yesterday the jury, after their two days' rest, were promptly in their seats. Judge Brady was punctual as usual, so were the counsel, District Attorney Phelps, for the people, and Messrs. Beach, Howe and Spencer for the prisoner. Mr. Scannell was brought in by the Deputy Sheriff in charge of him. His wife, mother, sister and other relatives were also in attendance early and remained throughout the proceedings.

The evidence yesterday was mainly directed to the mental excitement of the prisoner following his brother's death, and the feeling that he had that he himself was the object of political persecution, and that he would not receive any justice for his brother's death at the hands of the authorities. The evidence, though directed to prove the insanity of the prisoner, has, as yet, been confined to the testimony of laymen—acquaintances and intimate friends of Scannell. The professional testimony on this point will be commenced to-day, the examination to be confided to Mr. Howe, who expects to prove emotional insanity, and on which will be based the principal point in the defence.

The examination of witnesses for the defence was resumed.

TESTIMONY OF JOSEPH KING.

Joseph King, formerly in the employ of Scannell, was called to prove, from acts of the accused, that he was insane—On one occasion the prisoner sent witness to purchase some carpets and matting; when he returned the prisoner got in a rage, and wanted the money back which he paid for them; Scannell thought they were too dear; witness recited strange acts and curious conduct of the accused after the death of his brother; witness considered him insane sometimes.

TESTIMONY OF PETER CARROLL,

oysterman, of 116 East Twenty-first street:—I belonged to the Democratic General Committee in the year 1869; Donohoe also belonged to it; I don't think John Scannell belonged to it; Donohoe and the Scannells were good friends previous to the campaign of 1869; saw John Scannell the day Florence was shot; he was very wild and excited; brought him up stairs in the Compton House; saw him afterwards in the hospital, while Florence was lying there; he would always sit a distance from Florence's bed, would gaze intently on him and then drop his head on his breast in a melancholy and abstracted manner.

Mr. Beach—Did you witness the profuseness of the perspiration of the defendant?

Witness—Yes; perspiration would come out heavy on his hands and forehead.

Mr. Beach—Without any physical exertion?

Witness—Yes.

Mr. Beach—When was this?

Witness—In August.

On cross-examination witness gave his own earlier history from the time he left his father's house, at thirteen years old, down to the present time; he had heard of Scannell's being wounded, but he believed he was a policeman then.

George W. Hojer testified to a talk with John Scannell at Elizabeth, N. J., during which Scannell showed great trouble.

Witness met Scannell last Autumn at Catskill, and noticed that he looked haggard; Scannell complained of headache and weakness; witness noticed that whenever anything was said about his brother he looked very curious and became excited; the subject of the death of his brother was always avoided as much as possible; Scannell's mind wandered a good deal; he would talk politics, and suddenly turn the conversation to religious subjects.

Andrew Sheehan testified to the great affection the prisoner entertained for his brother, and to the changed demeanor of the prisoner from the day of the shooting of Florence Scannell.

John Hennessey stated that he was in the poolroom on the night of the shooting; saw both Scannell and Donohoe, and heard the latter say, "Come on, John;" thought Donohoe was standing still when he said this; he might have been moving about, however.

The Court here took a recess.

After Recess.

The first witness called upon the reassembling of the Court was

JOSEPH R. REED,

who, being sworn, testified—I reside at No. 5 Brevoort place, and am a butcher; have known John Scannell four or five years; knew Florence Scannell also; John was in the habit of visiting at my house both before and after the killing of Florence; I noticed a change in the manner and appearance of John after the killing of his brother; he visited me frequently, and used to get up at all hours of the night and stay up; once when his wife came and asked him to go home he said to me, "Joe, I can't go home, for they want to murder me;" another night, when he got up and I wanted him to go back to bed, he said to me, "Joe, you know I can't go to bed for

FLORRY KEEPS ON COMING TO SEE ME;"

he lost flesh very much after the shooting of Florence, and was very pale; he was subject to excessive perspirations also without any apparent cause.

Cross-examined—I sometimes trade a little in horses; when John visited me I lived at 450 West Forty-first street; I do not own any real estate now; John first came to my house on his own invitation, one day, as I met him at Alderman Odell's saloon, when I was returning from the race track; I usually allowed him to occupy any room he chose; he visited me frequently; the first time he stayed there two or three weeks; John was in the habit of going to bed about daylight; I am not landlord of any houses at present; I was landlord of the house I occupied in Forty-first street and of a house in Forty-third street; I am not and have not been proprietor of any house used for gambling purposes; had no connection with any such house except paying a visit now and then.

PATRICK CLAFFEY

was next sworn and testified as follows:—I am a painter and reside at 292 Third avenue; I have known John Scannell since 1863; prior to the shooting of his brother he was of a friendly, cheerful, quiet manner and disposition; I noticed a change in him after the death of Florence; he spoke to me once, about January, about painting his barroom, and I gave him a price; he wanted me to commence painting in the morning, when the carpenters had not yet broken the wall to put up the wood work of the doors he wanted me to paint; I told him he was crazy; on another occasion he was talking pleasantly to me and I happened to mention Donohoe, and John dropped his head on his breast and walked away from me; he was a changed man altogether in his manner; he fell away considerably in flesh; I have seen him wipe his forehead, but I do not know whether he was perspiring or not.

The cross-examination of the witness developed nothing of interest.

JAMES A. STANDISH

was next examined. He testified:—I have known John and Florence Scannell about six years; I assisted in taking care of Florence while he lay wounded at the hospital; John was there to see him every day; his manner towards him was very affectionate; at times he acted strangely, and in conversation was often disconnected. Witness proceeded to describe incidents which led witness to construe the prisoner's manner as "flighty;" he fell away in flesh after the shooting and death of Florence.

Cross-examined—I took care of Florence at the hospital during the daytime only.

PETER M'KNIGHT,

a long-bearded gentleman, was next sworn and examined. He said:—I live at 240 Stanton street; I have been an Alderman and a deputy sheriff; I have known John about twenty-eight years; knew Florence since he was a child; I noticed generally their conduct from their youth up; they were very cheerful and affectionate toward each other; I done business for John in the Sheriff's office; he once told me he was the happiest man in the world, and said he had not an enemy in the world; in the Jefferson Market court room at the time Florence was shot, John said to me, when I told him I was sorry to see him there and sorry to hear of Florence's condition, "Oh, my brain is burning!" and again, "My soul is on fire!" he was very much excited, and seemed to be deeply troubled. Witness proceeded to describe various incidents in the prisoner's conduct at and subsequent to the matters narrated above. He bled profusely at the nose, and I considered that that debilitated him a great—

District Attorney Phelps—Oh! oh! that is not wanted.

Mr. Howe—Mr. McKnight, an Alderman must not testify as to the effects upon the human system of bleeding at the nose. (Subdued laughter.)

Witness resumed—His general conduct, manner and conversation led me to consider him insane.

Cross-examined—On one evening John said, when I went to the Tombs to see him, "Florry sleeps with me at night; he is often here and is very cold;" I have called a number of times at the Tombs to see him; his manner was sometimes very strange; when he said that I told him not to talk that way; that I did not like to hear him say such things.

The witness was cross-examined by Mr. Phelps at considerable length, and at the close of his evidence

Mr. Phelps said that, in view of the testimony of the last witness, he arose to suggest that a

PHYSICAL EXAMINATION OF THE PRISONER

be made by physicians skilled in the subject of mental diseases. It could be done, of course, only by consent of counsel for the defence, and he desired that it should be done at once.

Mr. Beach—Has Your Honor power to make such an order at this stage of the case?

Judge Brady—I am inclined to the belief that the District Attorney has the right, without my order, to send a physician to see the prisoner; but, of course, it is at the option of the prisoner whether he will reply to any questions put to him by the physician.

Mr. Beach—Then why this public announcement?

The Court—That is not a question to be put to me.

District Attorney Phelps—I have nothing to say to any criticism which the counsel chooses to indulge in. I will say, however, that the testimony of the last witness, if entitled to any credence at all, leads to a supposition that this prisoner is now or has been, up to a recent period, insane. If he is in that condition he is manifestly not in a condition to be tried; and it would be the duty of his counsel, as well as my own duty, to determine that fact. I have, therefore, suggested it, as already stated by me.

Mr. Beach said he had already had some discussion with Mr. Phelps privately upon this question, at which it was suggested that Dr. Hammond and some other gentlemen named should make the examination. He (Mr. Beach) had objected to some of the gentlemen named. He supposed, however, that the law provided a manner in which such an examination should be had; but it was, undoubtedly, not intended to be brought up in this public way.

Judge Brady said he knew of no precedent for stopping a trial on the general issue to determine such a question, but he supposed such an examination could be had at any time by private agreement between the counsel.

Mr. Beach said it might be done in a proper way, but he would never consent to have a number of physicians go to the prisoner's cell and examine him by all sorts of questions and then come on the stand to testify against him.

Judge Brady—It is not necessary that anything further should be said on that question now.

The Court was then adjourned til this morning.

Subsequently Mr. Beach, in reply to a HERALD reporter, said:—"Yes, we have consulted about it, and Dr. Hammond and Dr. Echeverria are to go down to the Tombs and examine him; but he won't open his mouth to them."

MURDERERS ARRAIGNED.

The Chatham Square Murderer Nixon; Morgan, for Wife Murder, and the Boy William W. Barker, for the Shooting of the Boy Schaffer, Indicted for Murder in the First Degree.

At the opening of the Court of Oyer and Terminer yesterday morning Michael Nixon, John Morgan and William W. Barker were arraigned for murder in the first degree. On the evening of the 21st of January Nixon drew a pistol and shot down Charles H. Pfeifer, on Chatham square, because he would not get out of his way.

Morgan, on the 31st of January, while drunk, beat and killed his wife Catharine, in their shanty in Forty-second street. He is about twenty-three years of age, and has a vicious and dissipated appearance.

Barker is the boy who shot another boy, John D. Schaffer, some weeks ago in the Riding Academy on Sixth avenue while they were playing.

They all pleaded "not guilty," and were taken back to the Tombs to await trial.

BARON GASTON DE BRIMONT.

The Case of De Brimont vs. Penniman—Curiosities of French Law—Are Parents-in-Law Obliged to Support Needy Sons-in-Law?—Important Decision by Judge Woodruff—Dismissing the Suit.

Not long since there were published in the HERALD the particulars of the case of Baron Gaston de Brimont, the husband in her lifetime of Pauline Penniman, daughter of Mr. and Mrs. James F. Penniman, of this city. Miss Penniman was married in Paris to M. Gaston de Brimont, in which city her parents were then living, and where they resided for several years. M. De Brimont alleged that he was a man of title, a Baron; but it turned out that he was nothing of the sort. On the 7th of February, 1869, shortly after giving birth to her first child, Mme. De Brimont died, under circumstances which were supposed to reflect unfavorably upon her husband. M. De Brimont began an action against Mr. and Mrs. Penniman to compel them to pay him 10,000 francs per year under the law of France, which says that "fathers-in-law and mothers-in-law shall provide for their needy sons-in-law." On this action De Brimont obtained a judgment, from which the Pennimans appealed to the Imperial Court of France. That Court affirmed the judgment of the Court below. The Pennimans, having disposed of their property in France in a way in which it could not be affected by execution, declined to pay De Brimont anything unless he would give up his child to their custody and care. This De Brimont declined to do and he then came on to this city. Here he commenced against the Pennimans a suit in the United States Circuit Court, based on the execution obtained in Paris. The purpose of this action was to obtain a decree compelling the Pennimans to pay De Brimont an annuity for his support as their son-in-law. Yesterday Judge Woodruff rendered his decision on the question. He says:—

JUDGE WOODRUFF'S DECISION.

The broad question is—Can a citizen of the United States, whose daughter marries in France, be prosecuted here upon a decree of a French Court requiring him and his wife to pay an annuity for the support of their son-in-law? The subject pertains to the domestic relations of our own citizens and the duties and obligations resulting therefrom, and the decree in question proceeds upon the declaration of an obligation not in conformity with our laws, not known to the common law. The courts of this country will, therefore, be slow to hold that whenever an American citizen shall visit France and reside there temporarily with his family, his son or his daughter by a rash or unfortunate marriage can cast upon the parents, mother as well as father, the perpetual burden of an annuity for the support of the wife or husband.

After stating that this French law relative to fathers-in-law supporting their needy sons-in-law is a local law; that it is based on no universally recognized principles; that it is antagonistic to our institutions, and that it has a tendency to encourage fraud and idleness, Judge Woodruff concludes by saying:—"I am of opinion that the defendants are entitled to judgment."

LEAF FROM WALL STREET.

Speculations in Stocks and a Ten Years' Suit in Consequence—The Suit by Livermore, Clews & Co. vs. Richard Bainbridge—How a Referee Reported and How the Report Has Been Set Aside—Important Decision by Judge Fancher.

The particulars of the suit by Messrs. Livermore, Clews & Co. vs. Richard Bainbridge, growing out of stock operations, have, in the continuation of the litigation during the past ten years, been too frequently given in the HERALD to require any extended repetition of the facts. Meantime, as is well known, Mr. Bainbridge died, and the suit was continued against his estate. An unusual feature in the case was a report of the referee, to whom, after going through various phases in the courts, it was finally referred. This report brought the prosecutors in debt some $120,000 to the defendant, instead of substantiating their claim to large indebtedness by the latter to them. In view of such result, motion was recently made before Judge Fancher at Supreme Court, Chambers, to set aside this report. Judge Fancher yesterday gave his decision upon this motion. Owing to the novelty of the case and the important issues involved, we give in full the opinion embracing the decision. The following is the opinion:—

OPINION OF JUDGE FANCHER.

The defendant's testator, Richard Bainbridge, in 1862 commenced dealing with the plaintiffs as brokers. From September, 1862, until May, 1863, the transactions occurred out of which this litigation has arisen. The plaintiffs received from Bainbridge a deposit for a margin and made purchases and sales for his account of stocks, gold and United States demand notes. His original deposit with the plaintiffs was $5,070 44, and his agreement was to keep on deposit with them a margin of ten per cent on the amount carried for his account. On the 27th of May, 1863, the plaintiffs rendered to Bainbridge an account of all transactions to that date, and on the 12th of August, 1863, a further account was rendered by the plaintiffs to Bainbridge detailing the transactions from January 1, 1863, to May 30, 1863. By this account a balance appeared to be due to the plaintiffs, $15,351 45. The account consisted of over five hundred items, and covered thirty-four pages. The plaintiffs assert that there are a few errors in the account, which corrected would add $705 58 to the balance due them from Bainbridge. They admit he should have credit for $3,519 50 upon the amount due plaintiffs, that being the sum allowed to him by the arbitration committee of the Stock Exchange in respect of part of the gold held by the plaintiffs on his account. On the 3d of November, 1863, this action was brought by the plaintiffs to recover the balance thus claimed as due from Bainbridge. It was an action upon an account stated, and the summons was for a money demand on contract. The defendant's answer to the complaint was served on the 19th February, 1863, containing two defences. The first was to the effect that numerous errors existed in the plaintiffs' account, and the second defence averred that the sales of the stocks, &c., for the defendant's account were unlawful, and that the purchases made to cover short sales were invalid by reason whereof the defendant owned he had "sustained damage to a large amount and equal to the amount claimed in the plaintiffs' account. On the 15th November, 1864, Bainbridge commenced an action against Livermore, Clews & Co., to recover damages for the alleged unlawful sale and conversion of his stocks, gold and demand notes, alleging an improper sale and conversion thereof on the 27th May, 1863, and in that action he claimed damages for $52,000. It appears that on the 24th January, 1865, a motion was made in the original action, by the counsel for the defendant Bainbridge, to withdraw the second defence above mentioned. The referee in his letter of March 2, 1870, to Mr. Hewitt, the defendant's attorney, states:—"The motion made by you in this case to withdraw your counter claim, the decision of which was received at the time, I have decided to grant, not seeing any prejudice to arise in the action to the plaintiffs herein." Thereupon an affidavit was made on the 3d of March, 1870, by the defendant's attorney and used in a motion on the cross action against Livermore, Clews & Co., in which he deposed "that the action now pending before John P. Crosby, referee, does not involve the issues contained in this action; that about the time of the commencement of this action this deponent moved before Mr. Crosby, the referee, to withdraw the second and separate defence therein; that the question of the right of defendant to withdraw said defence was submitted to said referee, and after due deliberation was decided in favor of the defendant in that action." The referee, by a letter to one of plaintiffs' attorneys, dated March 3, 1870, informed him of the withdrawal of the said second defence. It appears by the motion papers that the withdrawal of the continuation or second defence thus referred to was made for the purpose of some supposed benefit to Bainbridge in his action against Livermore, Clews & Co., and the fact of said withdrawal was made prominent on a motion to stay proceedings in that action, which was decided on the 7th of March, 1870. At some time thereafter—but when, the papers before me do not disclose—the referee entertained and granted a motion made by the defendant's counsel "to amend the answer so as to include an allegation of damage to defendant by reason of the unlawful acts of the plaintiffs, as set forth in the second defence, to the amount of $130,000, and a demand of judgment for that amount, with costs." This motion was objected to, without avail, by the counsel for the plaintiff, and the referee on that new defence has reported against the plaintiffs, and ordered a judgment for $120,000 and costs. No actual amendment was at the time made by the formal drawing or service of such amended answer, although the judgment roll in this action contains what purports to be such amended answer. When it was first actually drawn is not explained. The question here arises whether the referee had power to order such an amendment. It seems plain that the referee exceeded his power. When the amendment was allowed there was no defence of the nature of a construction contained in the issue which could be enlarged by such an amendment as was allowed, nor was it possible for the referee to allow such a construction to be introduced in the answer, as it then stood, without permitting a substantial change of the defence. In effect the amendment amounted to a new defence of a nature different to that contained in the answer, which it has often been held is improper to be allowed on the trial, either by a judge or a referee. Ransom vs. Wetmore, 39 Barb., 104; Johnson vs. McIntosh, 31 Barb., 272; Walton vs. Bennett, 16 N. Y., 200; Whitford vs. Hungerford, 42 N. Y., 185; Ford vs. Ford, 35 How. Pr. Rep., 321. An amendment which proposes a new cause of action or defence should not be allowed. There is ground for the supposition in this case that the amended answer, as it now appears on the judgment roll, was not prepared until after the decision and report of the referee. It is asserted by the plaintiffs' counsel that they never saw it till it appeared on file in the roll. Had it been competent for the referee to allow the defendant the privilege of making such an amendment the answer should have been drawn and verified and served as amended. Then an opportunity to reply to it would have been afforded to the plaintiffs. Perhaps the statute of limitations or other reply would have been interposed to the counter claim. In Johnson vs. McIntosh, *supra*, the referee admitted proof of a defence not asserted in the answer, and on motion after trial the Special Term allowed the answer to be amended to cover the defence. But the judgment was reversed and the amendment pronounced to be improper. So in Woodruff vs. Dickie, 31 How B., 164, it was held that an amendment is the correction of some error or mistake in a pleading already before the Court, and there must be something to amend by, whereas the insertion of facts constituting a new cause of action or defence would be a substantial pleading, and not an amendment of an existing pleading. It was further said in that decision that there are no cases which furnish a satisfactory reason for holding such an amendment to be within the power of the Court to grant. It was not necessary that Bainbridge should set up, by way of counter claim, his supposed demand against the plaintiff. He was at liberty to bring a cross action for the same. (Peck vs. Minot, 4 Rob., 323; Lignat vs. Redding, 4 E. D. Smith, 285; Gillespie vs. Torrence, 25 N. Y., 306; Collyer vs. Collins, 17 Abb., 468.) He elected to abandon and withdraw his counter claim and to bring a cross action on his alleged demand. That action is still pending. After he had thus made his election it was not competent to allow a further amendment of the answer in the original action by reinstating the former abandoned counter claim in an amended form while the cross action was pending. The law does not favor double vexation for the same cause of action (15 Barb., 461; 2 Due. 611; Mills vs. Block, 30 Barb., 549; 15 Abb., 191). The plaintiffs proceeded to move to set aside the referee's report for irregularity before the entry of the judgment. The order to show cause permitted the entry of the judgment without prejudice to the motion. It is therefore proper to consider on this motion the question of the power of the referee to allow the amendment without remitting the plaintiffs to an appeal from the judgment. I am clearly of the opinion that the referee had no power to make the amendment on which the enormous judgment in this case is founded, and that his report, for that reason, should be set aside.

There is another ground of irregularity alleged. One of the plaintiffs states in his affidavit that before the case was summed up, the referee came to his office and told him he should advise him to settle the case. He further states he came to him a second time, after the cause was summed up, and, in one or the other interview, mentioned the sum of $35,000 as a proper sum to be paid the defendant by the plaintiffs. The referee himself has made an affidavit on the subject, in which he admits he called on Mr. Clews, but says it was upon another matter; that incidentally he spoke of this suit, and having been long acquainted with the firm of which said Clews was a member, and having been always on the most friendly terms with said Clews and his partner Livermore, made a remark in substance that he had not at all come to any conclusion about the case as yet, but that there were matters in evidence in the case which led him to believe that if he did give judgment for the defendant it would necessarily be for a very large amount, and he then suggested to said Clews that it might be well to think the matter over in that light, and, perhaps, it might be to their interest to settle it; that he has some recollection of mentioning some sum as having been discussed or spoken of by defendant's counsel, or some of them, and he thinks the sum was $35,000; but if he did mention such sum, or any sum, as having come from the other side, and not originating with him, said referee. A referee should not attempt to exercise the functions of a negotiator. However honest his intentions or well meant his endeavors, the failure of the attempt may be ground for the supposition that his subsequent judgment was, in some degree, influenced by it. The referee is a gentleman of high standing and character and it cannot be supposed that in fact he has allowed his mind to be influenced by the refusal of the plaintiffs to yield to his suggestions of compromise. But it has been held that the same rule should be applied to referees as to jurors. (Gale vs. Garmits, 4 How. 253.) Whenever a juror has been guilty of an irregularity which gives any reason to suppose that either party has been prejudiced by it, the verdict will be set aside. (1 Hill, 211; 1 Cow., 221; 2 id., 589; 3 id., 355; 5 id., 283.) Courts have ever guarded with jealous watchfulness the right of litigants to the unbiassed judgment of the jury or the referee. It has been remarked that whenever it has been seen that by any means or influence beyond what has transpired on the trial and in the presence of the parties the minds of the jury may have been influenced, their verdict will be set aside. (Dorlon vs. Lewis, 9 How., 4.) What was said in that case is appropriate here:—"A referee owes it to himself not only to avoid all improper influences, but even the appearance of evil." Whether satisfied with the decision or not, no one should be left for a moment to question its fairness. It is certainly unusual for a referee to receive the intimation from one party that $35,000 is a "proper sum" to be paid to him by the other, and to be the bearer of the suggestion to the other side with the incitement "that it might be well to think the matter over," in the light of the prediction that if he did give judgment for defendants it would necessarily be for a very large amount. Whether the failure of the plaintiffs to comply with the suggestion of the referee had any influence upon his mind or not, it seems proper that a referee or jury should be delivered from the possibility of bias or temptation under such circumstances. An order will be granted vacating the judgment entered in this action and setting aside the report of the referee for irregularity, and also discharging the order of reference.

A CITY RAILWAY CAR CASUALTY.

A Driver Shoves a Passenger from a Car and the Latter Loses a Leg—Dismissal of the Complaint in a Suit for Damages, and Why Dismissed.

A case came up for trial yesterday before Judge J. F. Daly, holding Trial Term of the Court of Common Pleas, the result of which, while affording abundant ground for encouragement to our city railroad companies in cases of prosecutions for damages on account of injuries to passengers, is certainly greatly discouraging to the prosecutors seeking through the Courts damages for their injuries. The suit to which reference is made is that brought by Adolph Reimer against the Third Avenue Railroad Company. Mr. Reimer is a young German, only twenty-three years old, and was employed as bookkeeper in a mercantile warehouse, in the lower part of the city. According to his statement in January, 1871, he got on a Third Avenue car with the intention of going to the German Hospital, in Seventy-seventh street. He did go to the hospital, but under circumstances very different from those he anticipated. There had been a heavy fall of snow, and the car, which was drawn by four horses, was crowded. Young Reimer, finding no room in the car or on the back platform, took a standing position on the front platform. As he neared Seventy-seventh street he asked the conductor, who happened to be on the platform, to stop at the next street. Instead of the car stopping, however, one of the drivers, as set forth in his complaint, "gave his head a push," and sent him stumbling from the car, the result of which was that two of the wheels passed over one of his legs, causing injuries that compelled its subsequent amputation. After the accident he was removed to the German Hospital, and remained there for six months. He brought suit for $20,000 damages. After hearing the evidence on his side motion was made by the counsel for the road to dismiss the complaint. This motion was pressed on the ground that, in accordance with a recent decision of the Court of Appeals, in the case of Isaacs against the same, an action for damages could not lie against the company. It was confessed that the act of the driver was wanton, malicious and wilful, but as he was not at the time carrying out any order of the company he alone could be held responsible for the casualty.

Judge Daly said that whatever might be his private views as to the decision in the case referred to by the Court of Appeals, he could not do otherwise than dismiss the complaint, and gave an order to this effect.

BUSINESS IN THE OTHER COURTS.

UNITED STATES CIRCUIT COURT.

Decisions by Judge Woodruff.

Stephen H. Cummings vs. Joseph Grafton.—The Judge says that enough is not alleged by the defendant to make the pleas a full defence. Demurrer to the first count is overruled with leave to the defendant to withdraw.

The United States vs. 1,412 Gallons of Distilled Spirits.—Defendant's demurrer is sustained.

The United States vs. Francis H. Buxom et al.—Judgment for the plaintiff on the demurrer, with leave to defendant to amend on the usual terms.

Samuel S. Thorp et al. vs. Samuel S. Hammond.—Exceptions overruled.

In Re Raymond S. Perrin and Isaac N. Hance.—Order modified so as to recognize the plaintiff's right to the moulding machines in question.

Criminal Calendar.

Among the criminal cases set down for hearing at the term of the United States Circuit Court, commencing March 12, before Judge Benedict, are the following:—

John W. Norton, Superintendent of the Money Order Department of the Post Office, embezzling $115,000.

George S. Denning, Stamp Clerk in the Sub-Treasury, embezzlement.

Charles MacKay, mailing obscene literature.

Leander and Byron Fox, same offence.

Woodhull, Claflin and Blood, same offence.

Julian K. Julian, same offence.

Benoni Howard, counterfeiting.

Peter Kehoe, dealing in counterfeit money.

SUPERIOR COURT—SPECIAL TERM.

Decisions.

By Judge Freedman.

Krouse vs. Gwinge.—Motion denied, with $10 costs to abide event. The proper remedy to test the efficiency of the defence complained of is a demurrer.

White vs. Talmage.—Motion granted provided Tunis V. P. Talmage, within three days after service of a copy of this order, file security conditioned for the payment of the judgment in case the said judgment should be affirmed on appeal, and the proceedings pending before the referee should finally establish the said Tunis V. P. Talmage was a partner.

Ritter vs. Phillips.—Motion granted.

Same vs. Kriekter.—Same.

Fitch vs. Fitch.—Order granted.

Hotchkiss vs. Hillyer.—Motion denied, with $10 costs.

COURT OF COMMON PLEAS—SPECIAL TERM.

Decisions.

By Judge Larremore.

Frith vs. Strobel.—Findings settled.

COURT OF GENERAL SESSIONS—PART I.

An Advertising Agent of the Aldine Convicted of Forgery and Sent to the State Prison.

Before Recorder Hackett.

The trial of Edward B. Banning for forgery, which was commenced on Friday, was resumed and finished yesterday. The accused was an advertising agent in the employ of Messrs. James Sutton & Co., the proprietors of the *Aldine*, and was charged with forging an order for an advertisement purporting to have been signed by Fellows, Hoffman & Co., upon which forged order he obtained $60 commission. Mr. Sutton, Mr. Drant, the bookkeeper; Mr. Vanderhoof, the cashier, and Messrs. Fellows & Hoffman, proved the forgery of the order and the circumstances connected with the reception of the money.

The defendant, when on the stand, admitted the forgery, but alleged that it was committed at Mr. Sutton's request.

Mr. Mott, the counsel for the accused, conducted the defence in an able manner, and took some exceptions during the trial.

Mr. Russell, in summing up, commented upon the strange defence presented by the accused, who, according to his own story, committed a forgery upon the suggestion of the man whom he intended to defraud.

After a clear and impartial charge the jury promptly rendered a verdict of guilty.

Banning made a speech previous to the passing of sentence, expressing the hope that His Honor would mitigate the punishment in view of the fact that he had served eight years as an officer in the navy and endured the horrors of Libby. He thanked the Recorder for his impartial rulings during the trial.

Recorder Hackett observed that he heartily concurred with the jury in the conclusion at which they arrived, and sentenced Banning to the State Prison for four years.

Acquittal of Cusick of an Alleged Assault Upon an Ex-Alderman—He is Sentenced to the Penitentiary Upon a Previous Conviction.

In the afternoon James Cusick, who, it will be remembered, was tried and convicted last week of assaulting a woman and was remanded to be tried upon another indictment, was placed at the bar. The complainant in this case was Isaac Robinson, who asked permission of His Honor to withdraw the prosecution. The Recorder refused to give his consent. A jury was empanelled and Robinson went on to narrate the circumstances attending the occurrence, which took place on the 4th of last July at Canary's stables, in Mercer street. One called the other a sucker, and a son of thunder and such like classic phrases were interchanged between the parties, which resulted in Cusick's touching Robinson slightly on the head. The jury did not believe that Cusick meant to do the ex-Alderman any harm and rendered a verdict of not guilty.

Assistant District Attorney Russell moved for judgment upon the previous conviction.

Mr. McClelland reminded His Honor that Cusick had been in prison three months.

The Recorder took that into consideration, and sentenced Cusick to the Penitentiary for ten months.

Grand Larceny.

Henry Martin, who was indicted for grand larceny in having, in complicity with a man named Clifford, stolen three pieces of iron shafting in November, the property of Robert Irving, was found guilty. In consequence of the previous good character of the accused His Honor listened to the recommendation of mercy given by the jury and imposed the lowest penalty allowed by law, which was one year's imprisonment in the State Prison.

Two Branches of the Court in March.

The Recorder directed the Clerk to order an additional panel of petit jurors to serve next Monday, for the purpose of holding a double branch of the Court. This will enable the District Attorney's office to dispose of all the cases now awaiting the action of the General Sessions.

COURT OF GENERAL SESSIONS—PART 2.

Another Protest from Mr. Howe—Judge Bedford's Extended Petit Jury—The Greenthal Case.

Before Judge Sutherland.

The first case on the calendar in this Court yesterday was that of Abraham Greenthal, indicted for grand larceny. The prisoner having been called to the bar,

Mr. Howe, as his counsel, said he had a most important motion to make to the Court. His client was one of the fifty or sixty cases that were tried during the extended term of Judge Bedford's grand, patient, elastic, accommodating petit jury; that having been drawn in the panel of November, 1871, was continued by Judge Bedford through December, in spite of his earnest solicitations and protestations at the time. Greenthal had, however, been tried, found guilty and sentenced to five years in the State Prison. Of that term he had undergone nearly a year's imprisonment, when the General Term reversed the judgment on the ground that Judge Bedford's action had been irregular. A new indictment had, however, been returned against Greenthal, and he had pleaded not guilty. He now asked leave to withdraw that plea and interpose in its stead a plea that, having been already been put in jeopardy of his liberty for this offence, he could not be subjected to the same ordeal over again.

District Attorney Rollins demurred, and said that the motion seemed to him very singular in its character. Counsel had gone to the General Term and argued that the proceedings were absolutely void, and upon that plea had secured a reversal of the judgment. Now, however, that a new trial was ordered, they came into Court and pleaded that an absolutely void proceeding had put them in jeopardy.

Mr. Howe replied that the grounds he had argued before the General Term were of no importance now. He might have argued that Judge Bedford had no jurisdiction. It would not necessarily follow that such was the fact. The question was "What were the proceedings?" and he claimed that they were in all respects regular, except so far as regarded the jury, and therefore the prisoner had in fact been put in jeopardy.

An Interesting Municipal Case—One of the Alleged "Dummy" Laborers Arraigned for Obtaining Money Under False Pretences.

The rest of the day was absorbed in the trial of a very interesting and important case, which will be watched with the closest attention by many among the employés of the city. Patrick Carroll was arraigned for obtaining money under false pretences from the Mayor and Common Council of the city of New York. There was at once a hush in the court, which was unusually crowded, and even the selection of the jurors seemed to be for once an important ceremony.

Assistant District Attorney Rollins, in opening the case, said that it was somewhat different from any others yet tried during the present term. The first witness he would place upon the stand would be Paymaster Falls, whose duty it was to pay the laborers upon the various public works of the city. In a certain payroll of the engineers, assistants and laborers employed upon the "big pipe" work, between Ninety-third and 113th streets, there appeared the name of Patrick Burns, of 51 Orchard street, and it would be shown that the defendant had falsely stated that that was his name and address, and that he had attempted to obtain by that representation the amount of $27, which was apparently due to that name and number on the payroll. The prisoner had even sworn that that was his name and address. There was a real Patrick Burns, but he had been sick for some months, and when he had resumed work the false Patrick Burns had continued to fraudulently draw pay, and had indeed done so for a long period. It was clear, therefore, that though the amount charged to have been the object of a fraudulent attempt by the prisoner was comparatively small, yet the case was a very important one, especially as it was suspected that there were a great many other cases of the same character, involving a systematic fraud upon the city upon an enormous scale.

Mr. Brooke, the counsel for the defendant, objected to the trial of the prisoner, on the ground that there was no such offence as an attempt to obtain money under false pretences. This was, however, overruled by the Court.

The first witness was Mr. Moor Falls, the Paymaster of the Finance Deparatment. He described minutely the routine by means of which the payrolls are made up and verified, and then stated that his suspicions having been aroused about the prisoner, who had been drawing pay for some months under the name of Patrick Burns, he required him to swear to his name and residence, which he did; as it was clear, however, that both name and address were false, he had him shortly afterwards arrested.

George W. Dresser, the superintendent of the "big pipe" works, upon which the prisoner professed to be employed, testified as to the manner in which the pay roll was made up and verified; he did not think it probable that a man could draw pay unless he did the work; a man might work under a false name, but the superintendent and foremen were guided by the numbers, not the names of the men; it was possible that if there were a conspiracy among the officials men might obtain pay without doing the work; he could not remember having seen the prisoner at work; he thought he had seen him, but was not sure.

Patrick Burns, the Simon-pure bearer of the name, testified that he had been employed on the big pipe works, and had lived at 51 Orchard street during part of 1871. In September of that year, however, he was sick, and had been obliged to discontinue work until February, 1872. He then resumed, but he had in the meantime moved from 51 Orchard street to 404 Greenwich.

George H. Smith, the next witness, gave by far the most important testimony against Carroll. He had been in the Tombs, a fellow prisoner of Carroll's, on a charge of obtaining money by false pretences, which had, however, since been dropped with the consent of the complainant, as it was utterly without foundation. Carroll had told him in conversation that he was in prison on a charge of getting money from the city, but what it was exactly he did not know. It might be perjury, he said, or it might be fraudulently obtaining money. Carroll also said that he used to go to work in the tool shop, but that he went there and left there as he liked, and that he usually went about eleven, did very little, and then, having reported himself, came away. He said also that he was one of Noe's men, and that he divided his pay with Noe. Also that other officials besides Noe had other men of the same kind on the pay roll, and that there were about a hundred such fictitious employés in all. He expected, he said, that Noe and Rice would bail him out. Witness was also present at an interview between the prisoner and his mother. His mother said some one had been to her that morning and had told her to say that her son was employed on the big pipe works and had been for some time; prisoner said that was all right; his mother then said soon afterwards another man came and asked her about him; prisoner then asked if that was a man with a mouse-colored coat, and on his mother saying "Yes," replied, "You must not say anything to him; that is Detective Farley." Witness, on cross-examination, stated that he had written a letter to the Comptroller in reference to the above facts while he was in the Tombs, and that he had subsequently been detained in the House of Detention as a witness, but he had no promise of any reward or compensation for giving his testimony.

Terence Farley was called and proved the arrest of the prisoner.

By this time it was nearly two o'clock, and a gentleman from the Board of Assistant Aldermen, in whose chamber the Court holds its sessions, came in and informed Judge Sutherland that that body were anxious to hold their usual session.

Assistant District Attorney Rollins said that as the Chamber had treated the Court with great consideration in voting it the use of their chamber, and as further it was probable that this would be the last session the Board would have a chance to hold, since it would be probably legislated out of existence that very day, it would be a little too hard on them not to give them up their own chamber.

Judge Sutherland thereupon adjourned the further hearing of the case until to-day at eleven o'clock.

COURT CALENDARS—THIS DAY.

SUPREME COURT—GENERAL TERM—Held by Judges Ingraham and Fancher.—Nos. 186, 11, 201, 245, 246, 248, 39, 251, 252, 254, 255, 256, 259, 260.

SUPREME COURT—CIRCUIT—TRIAL TERM—Part 2—Held by Judge Barrett.—Case on.

SUPERIOR COURTS—TRIAL TERM—Parts 1 and 2.—Adjourned for the term.

COURT OF COMMON PLEAS—TRIAL TERM—Part 1—Held by Judge Loew.—Nos. 1598, 3103, 1685, 1850, 1543, 1545, 1866, 1960, 1965, 1695, 1913, 1939, 1969, 1970, 1972, 1973, 1974, 1975, 1976, 1978. Part 2—Held by Judge J. F. Daly.—Nos. 1517, 1741, 1767, 1596, 1980, 1982, 1983, 1984, 1985, 1986, 1987, 1989, 1990, 1991, 1992.

COURT OF COMMON PLEAS—EQUITY TERM—Held by Judge Larremore.—Adjourned to 26th of February.

BROOKLYN COURTS.

CITY COURT—SPECIAL TERM.

Widow Spicer's Success—A Verdict of Nearly Six Thousand Dollars, and No Prospect of a New Trial.

Before Judge McCue.

When Elizabeth Spicer sued George Spicer for $40,000, which she claimed was her dower from the estate of her husband, John Spicer, the defendant's brother, the jury gave her a verdict of $5,777. This was about a month since, and the case was reported in the HERALD at that time. The defence was that Elizabeth was not the lawful wife of John Spicer. It appeared that the plaintiff had been married three times, and one of the features of the trial was the sudden reappearance of Hugh Miller, the first husband, whom she had not seen for nearly thirty years, and believed to be dead. The plaintiff said Miller had abandoned her, and she had subsequently heard that he was dead; but Miller, when called on as a witness for the defence, denied this, and asserted, on the contrary, that his Elizabeth left him. The jury found as already stated.

About a fortnight since George Spicer's counsel moved for a new trial, and yesterday Judge McCue rendered a decision denying the motion, with costs. In the course of his opinion the Judge says:—"The act of John Spicer alone in introducing plaintiff to the world as his wife, permitting her to join in the execution of deeds as his wife, was sufficient, without other proof, to establish plaintiff's position as wife and widow and to furnish a sufficient consideration for defendant's promise. The marriage with John, therefore, was abundantly established by John's own acts and declarations. Plaintiff's testimony went no further than to fix the time when and the person by whom the marriage ceremony was performed. The testimony could not possibly affect the transaction between the husband and the defendant, and does not come within the rule which induced the enactment that a person should not be a witness as to transactions occurring between that person and another person then deceased. The proposition that the plaintiff could be entitled to an inchoate right of dower in the estates of two husbands living at the same time, she never having been divorced from one of them, although it may appear novel, seems to be perfectly clear under our statute. The marriage of plaintiff with Miller was contracted under no disability, and is valid and subsisting at this day. * * * * * *

"The error which it is claimed exists in the computation of the value of plaintiff's dower is to be explained probably by the fact that the jury upon the testimony assumed the amount expressed in the deeds—to wit, $29,000—as the amount agreed on between the plaintiff and the defendant as the basis of computation when the time came for the adjustment of the plaintiff's rights and not as the gross value of the entire estate, from which the mortgages were to be deducted, and then the balance remaining to be divided into two equal shares upon the theory that John and George were in fact tenants in common, seized each of an equal undivided half. I should be wanting in frankness did I not admit that the case presents a variety of questions as intricate and mixed as appear to have been the domestic and marital relations of some of the parties to the suit, but upon a review of the whole case I have not been able to find any error which would justify me in sending the case to another trial, certainly not until a higher Court shall have reviewed and disposed of one or two leading questions which must in the end prove practically controlling as to the respective rights and obligations of the parties."

The case has elicited considerable interest in Brooklyn, where the deceased Spicer, who was a horse man and at one time in charge of the Union Course, was quite well known.

The Van Syckle Poisoning Case.

Johanna O'Leary, the principal witness for the people in the case of John Van Syckle, who is awaiting trial on the charge of having poisoned his wife to death in October last, was before the Court yesterday on a writ of habeas corpus, sued out by her counsel, Messrs. Shorter & Ridgeway, who asked for her release from jail, where she has been detained since the Coroner's inquest. Her counsel contend that at least she is entitled to a release on her own recognizance, and also question the constitutionality of the law authorizing the summary detention of witnesses. In consequence of the absence of District Attorney Britton at the Court of Appeals, in Albany, the argument of the case was postponed until Wednesday, and Johanna was remanded. She was employed as cook in Van Syckle's house.

COURT OF SESSIONS.

Prisoners Arraigned Yesterday.

Before Judge Moore and Associates.

The Grand Jury having finished their labors were discharged yesterday morning. The following prisoners were arraigned and the Court adjourned:—

George H. Porter, two indictments for false pretences. Pleaded not guilty. Trial March 10.

David Dowd and Eugene Small, two indictments, one for arson in second degree and one for burglary in the third degree. Pleaded not guilty. Trial March 10.

James W. Knox, one indictment for forgery in the second degree and one for false pretences. Pleaded not guilty. Trial March 10.

Hugh Barr, for manslaughter. Pleaded not guilty. Trial March 11.

John Cloonan, for assault and battery with intent to kill. Trial March 11.

COUNTY COURT.

A Bride of Three Weeks Leaving Her Husband.

Before Judge Moore.

About three weeks since Charles Sigimund married Maria Margaretta Henn, a miss of fifteen, but for some reason or other she declined to live with her husband, and returned to her mother's home, No. 155 Boerum street, E. D. Yesterday Charles appealed to the Court, and by means of a writ of habeas corpus sought to obtain possession of his wife, alleging that the mother was depriving him of her companionship, and illegally detained her. Maria, however, stated otherwise, saying that she wanted to remain with her ma. So the Judge had to dismiss the writ, and poor Charles went home without his wife. Maria said she married Charles because she was "over-persuaded."

COURT OF APPEALS CALENDAR.

ALBANY, Feb. 24, 1873.

The following is the Court of Appeals day calendar for February 25:—Nos. 607, 580, 611, 92, 68½, 1, 608.