THE COURTS.

The Action Against an Ex-Assistant Secretary of War.

THE TWEED TRIAL.

Proceedings in the Rosenzweig Case in the General Sessions.

Mr. Willett Denike yesterday resigned his position as United States District Attorney for the Southern district of New York in consequence of bad health.

A suit has been commenced in the United States Courts by the government against Daniel H. Wallace and Alfred L. Malcomson to recover $60,000 for alleged illegal importation of merchandise.

The case of the United States vs. Gustave Hubner was on trial yesterday in the United States District Court, before Judge Blatchford. It is an action to recover money alleged to have been obtained by the defendant, as a claim agent, on claims stated by the government to have been fraudulent.

Comptroller Green saved himself yesterday from going to jail by making up his mind that it would be better to comply with an order of the Court. The order, which was entered some time since, directed him to pay into court $4,291, an amount awarded to unknown owners by the Commissioners for opening the Boulevard. He paid over the money, and thus still breathes the air of freedom.

Judge Van Brunt yesterday denied the motion for a new trial in the Stemmler-Maguire suit. In his opinion—a lengthy and exhaustive one on the subject—he intimates his disapproval of the verdict against Judge Maguire, but does not care to assume the responsibility of ordering a new trial. He says the case is one that should go up on appeal, and indicates this as the proper remedy. The case will therefore be taken before the Supreme Court, General Term, and in case of an adverse decision here will be carried to the Court of Appeals.

Judge Barrett, in Supreme Court, Chambers, yesterday, granted the motion made on behalf of Samuel L. Tredwell by Mr. Samuel C. Mount for a commission to take the testimony of parties residing out of this State regarding the contract for building the Central Branch of the Union Pacific Railroad. A motion has also been made to confirm Benjamin C. Wetmore and Richard H. Bowne as trustees for the bondholders of the road, in place of Benjamin W. Bonney, deceased, and John E. Williams, resigned. The argument on the latter motion will be heard to-morrow.

The argument in the Police Justices matter, which has been in progress for several days before Judge Larremore, of the Court of Common Pleas, was concluded yesterday. Judge Larremore, at the conclusion of the argument, took the papers, reserving his decision.

CHARLES A. DANA.

The Action for False Imprisonment Against the Ex-Assistant Secretary of War—The Plaintiff Charged with Having Been Implicated in the Murder of Mr. Lincoln.

The further hearing of the case of Gazzaway B. Lamar vs. Charles A. Dana was resumed yesterday in the United States Circuit Court, before Judge Nathaniel Shipman and a jury. This is an action to recover $100,000 damages for alleged false imprisonment.

Ex-Judge William D. Shipman and Mr. McFarland appeared as counsel for the plaintiff, and the United States District Attorney for the government.

TESTIMONY FOR THE PLAINTIFF.

The deposition of General Jeffers, who made the arrest of the plaintiff at Savannah, was read in evidence on the part of the plaintiff.

EVIDENCE OF GAZZAWAY B. LAMAR.

The plaintiff was sworn. In answer to Mr. McFarland he said:—I was born in 1798; I was President of the Bank of Commerce; I dealt largely in cotton; the Provost Marshal arrested me at one o'clock at night, at the residence of my daughter-in-law; I was sick in bed; I was allowed to remain there until morning, when I was taken by soldiers, marched to the river, put on board a tugboat and taken to Hilton Head; General Jeffers allowed my daughter to accompany me; we were taken to Washington; when we reached that city General Jeffers brought me to the War Department; he went into an inner room of the Department; he came out and said he was very severely censured for allowing my daughter to come on to Washington with me; General Jeffers said she would not be allowed to remain in the city; I said I would send her on with some ladies to New York; General Jeffers said that that would not do, that she must leave that day; my daughter died three years ago; I was then carried to the old Carroll Prison, and then to the Old Capitol Prison; I was put into a room with fourteen other persons; there were fourteen single iron bedsteads, with single mattresses on them; there were dirty blankets, no sheets and dirty pillow-cases; I was kept there, sick as I was; I sent for a surgeon; he came and prescribed for me two or three times; I was sick, and the surgeon gave me a certificate; I sent that certificate to the War Department; I got no reply whatever; I repeated the application; I was in very reduced health during my imprisonment; I lost twenty-five pounds in weight and was approaching the grave, and if I had been much longer in the same condition it would have taken my life; just at that time the keeper of the prison, Colonel William P. Wood, who was acting in the double capacity of keeper of the prison and detective, came into my room and said to me:—"I know you'r suffering from a disease of the stomach; all the time I was in prison the disease in my stomach continued, until Wood returned; I was confined to oed most of the time, but whenever the pain passed off I could sit up or walk about the room, which was as dirty as it could be; I might say that there were

MILLIONS OF BEDBUGS

in the room; they were in the ceiling and furniture; you could not find any place in the room where they were not; Mr. Wood was kind enough to take me out of that room and put me into another; the room in which I was first confined was 17 feet by 20, and there were fourteen persons in it along with me; it had one window and one door, the latter not opening on the yard; the prisoners were allowed to walk for half an hour or an hour in the morning in the yard, but there was

SO BAD A STENCH

from the water closet that it was almost impossible to walk around; I was furnished with soldiers' regular rations, salt pork and "hard tack;" I had a cup of coffee morning and evening, but was allowed the privilege of getting food from a restaurant; I was not allowed to get money; I had some checks, but could not get them cashed in Washington; Mr. Wood said, "I will lend you any money you want;" I was arrested on the 25th of April, and arrived at the prison on the 3d of May; I left the prison on the 28th of July; I was released on a parole, which was written by the Secretary of War; this order gave me transportation back to Savannah; by the parole I was not to leave the city; I was bound to submit to a military trial whenever the President wished; I was required to report every month; I have got and produce a copy of the parole; this was given to me by either General Thomas or Mr. Stanton; they retained the original, which was dated July, 1865; I was never formally released from the parole; but I consider that I was released from it by the proclamation of the President granting amnesty; I continued to report myself as long as the government kept an officer in Savannah; sometimes I was absent, but I was always absent on permission; took an amnesty oath, and swore to it since Mr. Lincoln's proclamation, on the 6th of January, 1866. The witness then detailed the seizure of his books and papers at Savannah, while he was residing there with his daughter-in-law; the person who arrested him seized, at the same time, his books and papers, which had relation to cotton transactions in which he was engaged; he had lost a large sum of money in consequence of such seizure, but it was impossible for him to say how much it was; after his release his cotton was seized by persons purporting to act on behalf of the government. Witness mentions occasions in which, as he claimed, he was insulted and annoyed by officers of the federal government; he read in the papers that Mr. Dana was about to retire from the War Department; he wrote him a letter to ascertain what charge there was against him; he wanted a trial according to his constitutional right, and he gave the letter to General Colby to deliver it to Mr. Dana, but he never received any answer to it.

To a Juror—Was obliged to report every month; does not know if others had to do the same.

Cross-examined—Mr. York, the Provost Marshal, arrested me; he was, I think, accompanied by another officer; some soldiers also were present; held no military position during the war; held a quasi-military position in the State militia of Georgia which was in Savannah for the defence of the city; was not engaged in buying arms or ammunition abroad; last reported himself to Major Crotton.

To ex-Judge W. D. Shipman—I went up with several others to take the amnesty oath at the regular military office opened for that purpose.

To the Court—After my return to Savannah I reported myself regularly every month, and when I went out of the city I had to get a permit; I never went out of the city limits without a permit; I reported regularly in Savannah until the latter part of 1867.

To a juror—Some of the men with whom I was in prison were the vilest criminals ever incarcerated; some of the prisoners were using knives; three of the prisoners were gentlemen.

This was the case for the plaintiff.

THE DEFENCE.

The District Attorney, having made some remarks upon the law of the case, denounced the plaintiff as a loud-mouthed, open enemy of the government, a blatant secessionist, engaged in running the blockade, and taking every step he could possibly take to destroy the country. Counsel called attention to a statement which, he said, was written by the plaintiff, to the effect that he had taken the oath of amnesty for the purpose of being able more effectively to serve "the better cause"—to wit, the Confederacy. The paper contained strong expressions against "Yankees" and "Puritans."

TESTIMONY OF MR. DANA.

Mr. Charles A. Dana was then called to the stand. Having been sworn he testified as follows:—I reside in this city; I am editor of the New York *Sun*; I have been Assistant Secretary of War; my resignation took effect on the 1st of August, 1865, and I was in the War Department two or three years before that; I never saw the plaintiff until I saw him in this Court yesterday; I have never had any dealings or relations with him; I have heard read here the order signed by me for the arrest of the plaintiff; I could not swear to the exact phraseology, but I made that order and signed it; on the day on which I made that order, which I do not now recollect, some eight or ten days after

THE DEATH OF MR. LINCOLN

Mr. Stanton, the Secretary of War, sent for me to come to his office; he said, "I have sent for you to say that I desire you to make an order for the arrest of Gazzaway B. Lamar, of Savannah, we have reason to believe that he is implicated in

THE ASSASSINATION OF PRESIDENT LINCOLN.

What officer is there in Washington or about the State Department who is desirable to be sent to arrest Mr. Lamar?" I reflected a moment and then said there was General Jeffers, of the Provost Marshal's Department, who was not engaged, and asked if he would be acceptable to the Secretary. Mr. Stanton said he was acceptable, and that he could be sent. He also said, "Make an order to this effect." He then dictated to me in substance the terms to be used in writing the order. He said, "Sign it by order of the President." I wrote the order and delivered it to General Jeffers, and that was the first and last I knew of it. Mr. Stanton was my superior officer and I did nothing except by his authority and direction. When Mr. Lamar was in Washington I did not know he was there. If he had any conversation with any one in the War Department it must have been with Mr. Stanton. It was not with me. Independently of the authority of Mr. Stanton I had no control over the Old Capitol Prison.

Q. Did you ever receive any communication from Mr. Lamar while he was in prison? A. I do not remember—yet it is possible I did, and if I did I handed it to Mr. Stanton; at the time Mr. Stanton gave me this order I had no communication with him on the subject of the arrest; I only know the reason he stated to me for the arrest.

Mr. Dana was not cross-examined.

Mr. Lamar was recalled by the District Attorney and was questioned as to the statement he had made, giving his reasons for taking the oath of allegiance; but this testimony was ruled out, as were also offers to prove acts on the part of the plaintiff which had no relation to the reasons assigned by Mr. Stanton for causing the arrest. To this ruling the District Attorney excepted.

The case for the government here closed.

The District Attorney then asked the Judge to direct a verdict for the defendant. He stated that, apart from any other question, this action could not be maintained for the reason that express acts of Congress had taken away the right to proceed with it in the courts. Counsel referred the Court to the statute of March 2, 1867, volume 14, Statutes at Large, page 432; and spoke for an hour and a half in support of his view. He had not concluded at the rising of the Court at four o'clock.

The case will be resumed to-day.

THE TWEED TRIAL.

The Defence Make A New Move—Challenging the Panel of Jurors—Another "No. 8 Juror" Come to Grief—Going Backward in Getting Forward.

There was the usual large attendance at the Tweed trial yesterday in the Court of Oyer and Terminer, Judge Davis on the bench. Judging the day's work by its results, the progress in completing the jury would seem to be retrograde rather than forward, as there were eleven jurors in the morning and only ten when the Court closed.

CHALLENGING THE NEW PANEL.

Counsel for the defence challenged the array of the new panel of fifty, from which one juror is to be selected to complete the jury, on the ground that the fifty were selected from only 2,800 names, instead from the whole body of citizens liable to do jury duty.

Judge Davis overruled the challenge. Counsel then amended the challenge, to the effect that the omission to draw from the whole body of those liable to do jury duty was prejudicial to Mr. Tweed. Judge Davis also overruled the amended challenge, and counsel excepted to both rulings of the Court.

HUNTING MORE JURORS.

The gentlemen summoned were then called. Mr. John A. Hartcoin, cigar dealer at No. 86 Maiden lane, had formed a decided opinion and was excused.

Mr. Joseph H. Marks, commission merchant, of No. 126 East Tenth street, had formed an opinion, but he found it difficult to define its exact quality or form. He had a strong feeling against any public officer guilty of malefeasance.

Mr. Marks was excused by the Court on account of the sickness of his partner.

Mr. David Elihu Field, jeweller, corner of Broadway and Nineteenth street, said he had heard of the controversy between "the outs and the ins," as he characterized the charges against Mr. Tweed. Mr. Field was acceptable to the defence.

In answer to questions by Mr. Clinton, Mr. Field said he had put up a clock in the new Court House, under the direction of his employer, Mr. Kirkpatrick, and he had heard that Mr. Kirkpatrick had made badges for the Common Council; he had seen Mr. Tweed in Mr. Kirkpatrick's store, and he (Mr. Field) knew that Mr. Tweed was a customer of Mr. Kirkpatrick. Mr. Field said that he had taken an interest in the present case, on account of his acquaintance with Mr. Tweed. He had been summoned both by the Sheriff and the Commissioner of Jurors to attend as a juror; that the notices had been personally served upon him, and that the person serving the notices had told him that it would be necessary for him to appear at Part 1 in response to the summons. The clerks in the store had bantered him upon his being summoned as a juror, calling him by such names as "The Great American Juryman."

Ex-Judge Fullerton thought that Mr. Field was indifferent and competent to serve as a juror.

Mr. Clinton thought that the facts brought out from Mr. Field and the evidently reluctant manner of Mr. Field in giving the facts were matters which the Court should make cognizance of in such a way as to reject Mr. Field.

The Court rejected Mr. Field, and the defence excepted.

Edward Richardson, grocer, at No. 530 Pearl street, said it "would require testimony to remove his evidence," the remark causing a smile in the court room. When asked whether he had formed an opinion that would require evidence to remove, he replied in the affirmative, but said that he could decide the case on the evidence without reference to his opinion. When he had read the statements about Mr. Tweed in the papers he believed Mr. Tweed guilty of fraud, but he could now give a verdict on the evidence. He was excused.

Mr. Oliver W. Shaw, grocer, at No. 25 Carmine street, had a decided opinion which it would require evidence to remove. He was excused.

Mr. Pernett S. Stevens, foreman of the Union Rubber Company's works at the corner of Fourth avenue and 13th street, had read a great deal about the frauds charged against Mr. Tweed and others, and had come to the conclusion that where there were so many charges existing there must be some fraud, and he believed that if there was fraud Mr. Tweed was connected with it. He said he felt sure that notwithstanding his opinions, belief or expressions, he could give a verdict on the evidence, and he thought every honest man should be capable of so acting; still he thought that it would require some evidence to remove his opinion. He was excused.

The Court then took a recess of thirty minutes.

ANOTHER NO. 8 JUROR.

After recess Assistant District Attorney Allen said that the prosecution had become possessed of facts tending to show that one of the jurors already sworn was unfit to serve, and he asked that the challenge to the favor in relation to that juror be reopened.

Ex-Judge Fullerton objected to the reopening of the challenge, and asked that the prosecution present formal charges that could be met by the defence. Both himself and Mr. Tweed had been informed of the charges, and Mr. Tweed had declared that he had not endeavored or attempted to have any one else endeavor to influence the juror in question, but that there was no doubt that some enemy of Mr. Tweed had exerted his influence in that respect. He asked, therefore, that this matter be tried not by affidavit, but by open oral testimony.

The Court acceded to this, and Assistant District Attorney Allen called a Mr. O'Conor, who testified that he saw Captain Walsh talking with the eighth juror, Lubry, and saw Captain Walsh, before this, talking with Tweed.

Judge Fullerton cross-examined him at some length, and reduced his evidence to the above statement.

James E. Wilkinson testified that he saw Mr. Lubry go down the stairs from the court room talking with Captain Walsh.

The Court, on Mr. Fullerton's request, asked the Sheriff to send for Captain Walsh.

Mr. Lubry asked himself to explain his talk with Captain Walsh, but the Court deferred his explanation.

Counsel for the defence objected to a question put to Mr. Wilkinson, but Judge Davis declared that he would receive anything, without regard to technical rules, that tended to show that a juror had been tampered with.

Wilkinson said he watched Walsh and Lubry some minutes.

Mr. Allen said the witness was employed by the District Attorney's office, though not on this special point.

The further cross examination elicited that the witness was one of Pinkerton's detectives assigned to duty in the District Attorney's office.

Captain Edward Walsh here came in and was examined as to his conversation with Mr. Lubry. He said that he had known Mr. Lubry ten or twelve odd years, and, not having met him for nearly a year, talked with him for a few minutes, but not a word as to the case; he had previously talked with Mr. Tweed, who was a friend of twenty years' standing.

Q. After that did you talk with Mr. Tweed? A. No, sir.

Counsel (impatiently)—No, I went away with Mr. Tweed.

Mr. Fullerton—That's suspicious. (Laughter.)

Captain Walsh—I did come back; I talked with Mr. Dewey and others, but not with Mr. Tweed; I have not talked with any one lately about Mr. Tweed's case; I did not know Mr. Lubry was on the jury till I saw him yesterday.

To the Court—He asked me how I was getting on, whether I was making much money; I said I had a gent's furnishing store on Sixth avenue and was making as much in one year now as in two when I was a barber; then I handed him my business card.

Judge—Had he expressed any desire to make purchases of you, that you gave him your card? A. No, but just the same as I would give it to any of my friends, to come and buy from me, if they wanted anything.

Judge—I cannot bring my mind to the conclusion that this transaction was entirely innocent. On the contrary, it is covered all over with suspicion. Captain Walsh, a friend of many years' standing, and meeting him, is not a circumstance of grave importance; but that he should chance to be located at the time with particular friends of the defendant, such as his private secretary, and hanging around the ante-chamber, and talking with a party implicated in the loss of the vouchers, and be there until the jury left their seats, and then, without any intention of going home, shaking hands with the juror, and going down with him to the foot of the stairs, and anxious to know whether he was making plenty of money, and then, coming back to the ante-chamber, covers the case with such suspicion that whatever verdict would be rendered it would never be regarded by the public mind as an honest one. The juror, besides, has not, in my judgment, acted with frankness in disclosing information that it was proper he should give. He has been the intimate friend of a distinguished politician and he never told us. It is my duty, which I discharge with more pain than pleasure, to discharge this man from the jury, and get in his place one more likely not to be accosted by any one as to his peculiar success in business.

No. 8 juror being relieved at once vacated his chair and left the court room.

RESUMING THE JURY HUNT.

Henry A. Foster, stock operator, was next examined. He admitted on cross-examination that he is intimate with Richard B. Connolly, nephew of one of the defendants in this indictment. He was excused by the Court.

A JUROR ASKS TO BE EXCUSED.

At this point Frederick Lewis, the tenth juror, stood up and begged to be excused. He said he understood the juror should be perfectly unbiassed, and he was not questioned on this point.

Judge—Both sides accepted you, sir. You must remain.

The jury were then sent to the Astor House in charge of special sheriffs, and the Court adjourned.

THE ROSENZWEIG CASE.

Elaborate Decision of City Judge Sutherland, Granting the Prisoner's Discharge.

Yesterday His Honor City Judge Sutherland filed an elaborate and able opinion upon a motion to discharge Jacob Rosenwzeig, who, it will be remembered, was tried and convicted in this Court in October, 1871, of manslaughter in the second degree. He produced an abortion on Alice Augusta Bowlsby, which resulted in her death. The trial excited a great deal of interest at the time because of some horrible features connected with the affair. A trunk containing the remains of the unfortunate girl was sent from the prisoner's house, in Second avenue. A writ of error was obtained and a new trial was granted by the General Term in November, 1872, since which time Rosenzweig has been confined in the Tombs awaiting a new trial. Mr. William F. Howe, the prisoner's counsel, filed two special pleas as a bar to further trial—the first, a former trial and conviction and sentence, and the second, the passage by the Legislature of the act of April, 1872, averring that by it the act of May 6, 1869, was repealed, and that there was no law in existence under which he could be retried. The Judge proceeded to consider the District Attorney's replication to the pleas of the prisoner, and says that in his decision in the Greenthal case he came to the conclusion that the first plea did not constitute a bar to a second trial. As to the act of 1872, the Judge says:—"I suppose it is admitted that the act of 1872 was inconsistent with the act of 1869, as the offences committed after the passage of the act of 1872, and therefore that the latter act repealed the former as to offences committed after the passage of the act of 1872. It inevitably follows from this admission, in view of the express repealing words in the act of 1872, without any qualification, exception or saving clause as to offences committed against the act of 1869, before the passage of the act of 1872, that the latter act repealed the former as to the last mentioned offences. Strike out the fifth section of the act of 1872 containing the repealing words, and I am not willing to say that it would be inconsistent with anything left in the remaining sections to hold that the Legislature intended that the act of 1869 should be left in force as to offences committed against or under the act of 1869 before the passage of the act of 1872. But I have no right, judicially, to strike out or disregard the fifth section of the act of 1872, and with that section in it, without any saving clause in it as to prior offences, I repeat, admit or assume that the act of 1869 is inconsistent with the act of 1872 as to offences committed after the passage of the latter act; that is, that both acts cannot subsist or continue in force after the passage of the latter act, and it inevitably follows that the latter act repealed the former act as to offences committed before the passage of the latter act. His Honor cites a large number of authorities in the course of his able argument, and, in conclusion, says that he discussed the questions involved with an elaborateness which would have been inexcusable in almost any other case. There must be judgment for the prisoner on the demurrer, and he must by discharged."

Assistant District Attorney Russell asked for a day's delay to investigate whether or not Rosenzweig could be detained, and Mr. Ira Schiner insisted that the decision rendered entitled the prisoner to an unconditional discharge, and instanced the Hartung case, in which he appeared as counsel and succeeded in securing the release of that defendant under similar circumstances. Mr. Howe also insisted that there could be no stay to a final order, to which Judge Sutherland assented, and directed the clerk to enter his opinion on the records of the Court and allowed the District Attorney time until to-day for further action in the premises.

BUSINESS IN THE OTHER COURTS.

SUPREME COURT—CHAMBERS.

Green Not So Green After All.

Before Judge Barrett.

Time and time again motions have been made to punish Comptroller Green for his frequent disregard of the orders of the Courts. Somehow these efforts to place the head of our city exchequer upon the common plane of ordinary mortals as regards responsibility in legal proceedings have proved of no avail. Mr. Green has not yet seen the inside of a prison, nor has he been mulcted in any fine, or been made the subject of any penalty. He still snaps his fingers at the orders of the Court with the same unyielding audacity, and only yields when pushed to the wall. The last effort to punish him for contempt of court was made in this Court.

"Andrew H. Green," called out lustily the court officer, a call to which there was no response, but which evoked general laughter.

"I move for a precept to commit Mr. Green to prison for contempt of court," immediately added Mr. C. P. West, a prominent counsellor of the Court.

"In what case?" asked Judge Barrett, showing very clearly that several cases in which there was a possible likelihood of such a motion being made were fresh in his recollection.

"In the case," answered Mr. West, "of the order made by the Court regarding payment into court of the amount of the award to unknown owners in the matter of the Boulevard opening, of which Messrs. Seaver, McClave and Traphagen were the commissioners. After the award had been made an order was entered by this Court directing the payment into court by the Comptroller of the amount of this award."

"When was the order made?" interrupted Judge Barrett.

"On the 3d of last June, and from that time to this no attention whatever has been paid to it," replied Mr. West.

"For the good reason," broke in Mr. Forker, Assistant Counsel to the Corporation, "that he has got no money."

"He had it when the order was entered," tartly responded Mr. West, "and if he has not got it now it is his duty by statute to raise it on bonds."

"I would like to have the case stand over a while," pleaded Mr. Forker.

"Mr. Green should be here himself to-day," added Mr. West. "He knows very well that the order to show cause why he should not be punished for contempt in this matter was returnable to-day."

After some further discussion Judge Barrett, who conceded that the order, though granted ex parte, was a proper one, and that there was no way for the Comptroller, as far as he could see, to avoid conforming with the order of the Court, granted the grace asked for. On the case subsequently being called up Mr. Andrews, another of the assistant counsels to the Corporation, stated that the Comptroller had paid the money as directed by the order of the Court. Of course this ended the matter.

"So you did not quite succeed in getting Mr. Green into jail," said a gentleman, after the proceedings had terminated, to Mr. West.

"I didn't expect to," answered Mr. West. "But this is the only way to manage him. Push him to the wall, with a jail in prospective, and he'll pay, and not before."

Decisions.

By Judge Barrett.

Hodgeman vs. Goodwin et al.—Mr. Marvin W. Butler will be appointed receiver upon filing a bond, to be approved by one of the Justices of this Court, with two sureties in the penalty of $60,000.

Barry vs. Mutual Life Insurance Company.—Injunction and order to show cause granted.

Meyers vs. Meyers.—Report confirmed and judgment of divorce granted.

Greenbacher et al. vs. McNamara.—Memorandum for counsel.

In the Matter, &c., of Norwood, Receiver, &c.—Motion denied, with $10 costs.

Lambrecht vs. Smith.—Application denied.

Treadwell vs. Pomeroy et al.—Motion granted, without prejudice.

Crane vs. Jeffords.—Default opened upon payment of $30 trial fee and $10 costs of opposing the motion within five days. The judgment and all proceedings thereunder to stand as security.

Smith et al. vs. Williams.—Motion denied, with $10 costs, to abide event.

In the Matter, &c., of Hummel.—Order granted.

SUPERIOR COURT—GENERAL TERM.

What is Railway Negligence and Do the Court of Appeals Know the Law?

Before Judges Barbour, Monell and Freedman.

Robert Squier, Administrator, vs. The Central Park, North and East River Railroad Company.—The plaintiff not long ago, for the death of his infant son, recovered $5,000 in a suit against the defendant's company, and the latter moved for a new trial. During argument by Mr. Oakey Hall for the company, the Court intimated that the boy who got killed was presumptively careful of his life. To this the opposing counsel demurred, stating that if there was any presumption on the subject it ought to be that an average New York boy was not only reckless of his own life, but of other lives while in the street. Judge Barbour, in regard to another intimation of Mr. Sherman for the boy's father, in quoting a decision of the Appeals Court, remarked that the Justices of that Court necessarily made rapid adjudication, had little vacation, and, therefore, their decisions were to be averaged. The main question argued was whether or not a sidewalk bystander was bound to look up or down the street before he started to cross when a vehicle was approaching, or could even recover damages if he run in front of horses without looking. Many decisions were read each way, showing that the law seems to hold foot passengers to stringent carefulness if coming across a street when a railcar is regularly travelling, and citizens will take notice.

SUPERIOR COURT—SPECIAL TERM.

Decisions.

By Judge Sedgwick.

National Park Bank vs. The New York and Housatonic Railroad Company.—Order overruling defendant's demurrer, and for judgment, with costs, &c.

Cox vs. Washburn.—Motion denied.

Benito vs. Cucalon.—Order modifying injunction.

Cecil et al vs. Clements.—Order of reference.

Clements and Another vs. Jones and Another.—Order modifying injunction, &c.

Wahlig vs. Sharpe and Kallinger vs. Stattnecht.—Orders granted.

COURT OF COMMON PLEAS—SPECIAL TERM.

Decisions.

By Judge Larremore.

Swan vs. Swan.—Divorce granted, and alimony fixed at $10 per week.

Farmlee vs. Farmlee.—Report confirmed and judgment of divorce granted to plaintiff.

Raisbeck vs. Raisbeck.—Defendant's attorney must have notice of the application for judgment.

Meruni vs. Gress.—Default opened on payment of costs of motion and cause ordered on day calendar.

In the Matter of The People, &c., vs. Connor.—Application granted.

By Judge Loew.

Collins vs. The Philadelphia Iron Diking Company.—Motion to open default granted on payment of $10 costs.

Fiske vs. Terrell.—Motion denied. (See memorandum.)

By Judge J. F. Daly.

Averell vs. Patterson.—Motion to place cause upon short calendar denied, without costs.

MARINE COURT—PART I.

A Moving Suit.

Before Judge Joachimsen.

Knowlton vs. The New York and Harlem Railroad Company.—The plaintiff states that in March last, being about to move from Mount Kisco to Harlem, he called at the office of the defendants in this city and engaged a freight car to carry away his household goods, with the arrangement that the car, instead of being brought down to the depot at Forty-seventh street, should be dropped at 100th street, Bull's Head, so as to be more convenient to his new home, in 110th street. The car was furnished on the 1st of April and the furniture packed, arriving at 100th street on the evening of that day, but on the plaintiff's coming there, on the morning of the 2d, he found his car standing between stock cars and against the cattle pens in such a position as that he could not get at it, and that it remained so until the morning of the 3d, when, on proceeding to unload, he found that the car had been broken into and about $700 worth of clothing and silverware abstracted. For the value of this property he brings the present action. The evidence on the part of the defence is that on the day before it was stated to plaintiff that such a thing would be irregular, and that the reputation of Bull's Head was such that it would be unsafe to leave any property there; but that on plaintiff stating that he would take all the risk and remove the property early in the morning leave was granted; that no application was made by him on the 2d for the property, or to have the car moved into a more convenient position, and that A. Isaac was caused entirely through plaintiff's own negligence.

The Court charged the jury that if the defendants received the plaintiff's goods in the usual mode they were liable for its safe keeping until a reasonable time after its arrival here for plaintiff to take them, and if its application was such that plaintiff could not get at it they were liable for such care of it as a reasonable man would take of his own property until such an opportunity should be afforded; and further instructed them that no liability existed for the safety of the silverware unless the defendants had notice that such articles were included among the property to be transported.

The jury rendered a verdict in favor of plaintiff for $608.

A motion was entered for a new trial. For plaintiff, Charles Mott; for defendant, Elliott F. Sheppard.

TOMBS POLICE COURT.

Watch Stealing.

Before Judge Morgan.

On the 16th of September last John and Thomas McNichol were walking through Washington Market, John had his pocket picked and a gold watch worth $140 taken away. His brother Thomas saw the transaction, but was unable to arrest the thief. Yesterday Officer McDonald, of the Third precinct, arrested Thomas Morris, aged sixteen, who was identified by Thomas McNichol as the person who stole his brother's watch. Morris was held in $1,000 bail to answer by Judge Morgan.

Stabbing Case.

James McGonigal, of No. 125 Mulberry street, was arraigned on a charge of assaulting John G. Schutte, of No. 50 Pike street, with a knife. Schutte was cut very severely in the left side. The prisoner was held in $1,000 bail to answer.

Chasing a Watch.

William Clark, a liquor dealer, of No. 78 Amity street, was arraigned on the complaint of William Ferguson, of No. 852 Lexington avenue. Ferguson, while riding on a Fourth avenue car on the 6th of November last, had a gold watch worth $75 stolen from his vest pocket. He put the case in the hands of Detective Tully, of the Central Office, who traced the watch to one Nasemith, an engraver, doing business at No. 65 Nassau street. Nasemith had received it from a jeweler named Cockburn, of No. 244 Mulberry street, who left it with him with instructions to have the name of Ferguson, which was on the cap, erased and chasing substituted. Cockburn had received it from Clark, the prisoner, who offered it to him for sale for $45. On the testimony of the witnesses Clark was committed to answer in $2,000 bail.

COURT CALENDARS—THIS DAY.

SUPREME COURT—CIRCUIT—Part 2—Held by Judge Van Brunt.—Nos. 2144, 2354, 844¾, 1210, 324, 1278, 38¾, 1304, 1490, 1318, 1320, 1322, 1324, 1328, 1332, 1342, 1350, 1352, 1354½, 1358.

SUPREME COURT—CHAMBERS—Held by Judge Barrett.—Nos. 27½, 48, 49, 61, 68, 89, 123, 123½, 124, 162, 163, 190, 191, 228, 237, 242, 248.

SUPERIOR COURT—Part 1—Held by Judge Curtis.—Nos. 1309, 661, 345¾, 789, 961, 809, 391, 777, 679, 723, 829, 619, 655, 667, 379. Part 2—Held by Judge Van Vorst.—Nos. 772, 390¾, 820, 278, 804, 1321, 722, 734, 658, 766, 514, 740, 548, 748, 754.

COURT OF COMMON PLEAS—TRIAL TERM—Part 1—Held by Judge Robinson.—Nos. 1491, 2011, 2012, 2245, 2424, 856, 2164, 2430, 2375, 1945, 1682, 68, 1397, 2260, 2324.

MARINE COURT—Part 1—Held by Judge Joachimsen.—Nos. 2874, 2218, 2558, 3283, 3032, 2987, 3402, 3403, 3530, 2659, 1618, 2885, 3426, 3006, 3092. Part 2—Held by Judge Gross.—Nos. 3473, 1658½, 3041, 2595, 2793, 2853, 3495, 3416, 2507, 2645, 2691, 2871, 2929, 2923, 2925. Part 3—Held by Judge Curtis.—Nos. 2517, 2103, 2573, 2745, 2765, 2490, 2666, 2754, 2808, 2858, 2874, 2944, 2946, 2952, 2898.

COURT OF GENERAL SESSIONS—Held by Judge Josiah Sutherland.—The People vs. Edward Kenney, robbery; Same vs. Daniel Murphy, robbery; Same vs. Thomas Finley, Christopher Dunnigan and Thomas Whittmore, grand larceny; Same vs. Robert Kelley, grand larceny; Same vs. Thomas Sherwood, grand larceny; Same vs. Michael Larkin, alias Hanlon, larceny from the person; Same vs. William Lawless, larceny from the person; Same vs. Daniel Mahony, larceny from the person; Same vs. Mary Johnson, larceny from the person; Same vs. Hyman Copperman, receiving stolen goods; Same vs. Robert Saunders, attempt to induce perjury.

BROOKLYN COURTS.

SUPREME COURT—CIRCUIT.

A Transaction in Wines—Action to Recover $40,000—A Question of Storage or Sale.

Before Judge Barnard.

Henry A. Richard has brought suit against Isaac B. Wellington and others to recover the value of some wines, amounting as plaintiff claims, to about $40,000 The parties are from New York. It is claimed by the plaintiff that he delivered the wines to the defendants, who were to store them for him in their bonded warehouse, but that they subsequently appropriated the property to themselves.

The defendants deny this allegation and say that they received the wines with the understanding that after a certain period they might buy them; that after the wines had been on storage for two years they did agree to buy them, but when they came to settle up there was a difference as to the price. The defendants wanted a deduction for storage and shrinkage.

It seems that there was an interchange of notes between the parties and this has added to the complications of the case. The trial has occupied all of yesterday, but will probably be concluded to-day.

CITY COURT—TRIAL TERM.

Perils of the Street—Suit for $5,000 for a Run Over Casualty—Equine Eccentricities.

Before Judge McCue.

Ann Meany, an old lady, sued James J. Noyes, of Montague street, to recover $5,000 damages for injuries alleged to have been received by being knocked down by a team of horses belonging to the defendant. The plaintiff's story was that she was crossing Remsen street, at Clinton, when the horses, which were driven by a colored coachman named Johnson, suddenly turned the corner of Clinton street and knocked her down. The carriage, however, did not run over her. She received a fracture of one of her wrists and other injuries, which confined her to the hospital for a month. The horses were quite spirited ones and were being driven at a rapid rate.

The coachman Johnson swore that he shouted to Mrs. Meany to get out of the way, and that while in the act of crossing she fell and thereby sustained the injuries complained of. He emphatically denied that either of the horses had struck her.

In order to rebut the charge that his horses were fast trotters Mr. Noyes stated that one of them had formerly been used as a stage horse and that the other was driven before a butcher's cart.

Counsellor Thomas E. Pearsall became somewhat facetious while summing up for the plaintiff, and entered into a brief discussion of equine eccentricities. He insisted that if there was anything a stage horse liked to do it was to run over old women, and, as for butchers' horses, why, their sole delight was to turn street corners at sharp angles, swing the carts out into the centre of the street and run over everybody they could get at.

Six of the jury, however, failed to appreciate the subtlety of the counsellor's humor. There was a disagreement and the jury was discharged.

COURT OF APPEALS CALENDAR.

ALBANY, Nov. 12, 1873.

The following is the Court of Appeals day calendar for November 13:—Nos. 75, 78, 4, 19, 18, 45, 66, 83.

THE JERSEY KIDNAPPING CASE.

Intense Indignation Throughout Jersey City—Extraordinary Action of a Police Justice—The Alleged Kidnappers Let Loose and the Injured Man Held in Custody—The Case in the Supreme Court.

It would be impossible to exaggerate the feeling of indignation throughout Jersey City at the outrage perpetrated upon a peaceable citizen by a New York gang, as set forth in yesterday's HERALD. Nothing that has occurred within the past decade created such excitement, not even the maleleasance trials. Yesterday morning, when the case was called, the Police Court was crowded. Pinkerton and his companions Meehan and Schildge were present, as well as Bowe, the sufferer in the case, accompanied by his counsel, Norman L. Rowe. Officers Eaton and Whinyates testified to the outrage and their interference with the gang. Pinkerton and his companions attacked and tried to tear Bowe from the grasp of the officers, when Whinyates held Bowe. Eaton collared both Pinkerton and Meehan, and, in spite of all the bluster and threats of the latter, dragged them to the station house. Officer Eaton's pluck and promptness was the subject of general admiration.

Peter Emerson, a boarder in Bowe's Hotel, who witnessed the struggle, was placed on the stand, and he testified as follows:—I was playing an instrument in the barroom and heard scuffling; I saw Bowe being dragged towards the door by five men, the three in Court here and two more; they dragged Bowe out to the sidewalk and then all five drew revolvers and flourished them about; they seemed to be very much excited and pulled their pistols out and put them back again several times; bowe grabbed the railing at the corner of Montgomery and Green streets, but was pulled away by the detectives; I interfered, and Meehan told me he would blow my guts out if I didn't go away; every man of the detectives had a revolver; Schildge pointed his revolver at me also; all the men were in the barroom together; have seen Schildge in Bowe's place several times during the summer.

This witness' statement was corroborated by Gus Phillips and Henry Bushnell. Pinkerton and Schildge, two of the accused, were then heard in their own defence. They stated that they held a requisition for the arrest of Bowe, but Schildge contradicted himself in many important particulars. He said he was engaged in the case by District Attorney Pheips, and had obtained the requisition within two days, whereas on examination it was found the requisition bore the date October 5. Schildge, at this exposure, stammered and hesitated, and there was quite a commotion in the court room.

Mr. Rowe, the counsel for Bowe, then arose, and, addressing Justice Seymour, said:—"If the Court please, the residents of Jersey City have been startled. These men came over here for the purpose of dragging a citizen to New York without color of authority. Be Mr. Bowe a good or a bad citizen while in New York, it is not proved that he is a bad citizen of New Jersey. By these men's own admission