THE COURTS.

IMPORTANT INJUNCTION PROCEEDINGS.

The Old Mariposa Mining Property in Court.

THE NEW ERIE RAILWAY LITIGATION

Modifying a Modified Injunction.

SCHWAB'S CASE AT A STANDSTILL.

In the United States Circuit Court a petition was filed yesterday by Newman Aaronson, alleging that he was adjudicated a bankrupt, and that after such adjudication he was arrested by the Sheriff of New York in a civil action for the sum of $580 08, at the suit of Louis de Jonge and others, in the Supreme Court of this city. Mr. Aaronson further declares that the debt on which he has been thus arrested is one provable in bankruptcy, and he petitions the Court for relief in the premises. A writ of habeas corpus has been granted, for the purpose of bringing the matter up for determination before Judge Blatchford.

In the United States District Court yesterday Judge Blatchford called the admiralty calendar and fixed days for the hearing of causes. In the Circuit Court Judge Nathaniel Shipman called the civil jury calendar, and a good number of cases are fixed for trial.

Yesterday, in the United States Commissioner's office, W. P. Girard, the purser of the steamer Crescent City, plying between this port and Havana, was brought before Commissioner John A. Shields and charged with assisting in the smuggling of 20,000 cigars. He was held in $5,000 bail. It is alleged that the cigars in question are those which D. P. Harris, a Custom House officer, aided in getting through the Custom House in an illegal manner. Both Girard and Harris are under indictment for the offence in question.

John Gillick, of No. 66 Broome street, was held by Commissioner Shields yesterday in $500 bail for examination to answer a charge of not paying his special tax as a liquor dealer.

The supervisors of election and special deputy marshals of the First, Second, Third, Fourth and Sixth Assembly districts are to be paid this evening, at half-past six o'clock, at the Marshal's office.

THE MARIPOSA ESTATE IN COURT.

This appears to be the day for injunctions and particularly against large corporations. Application was made yesterday in Supreme Court, Chambers, before Judge Davis, by Messrs. Martin and Smith, counsel for Eugene Kelly, banker, for an injunction against a well known mining company. On the list of defendants appears the names of gentlemen well known in business circles, such as Mark Brumagim, Chauncey Vibbard, C. Bainbridge Smith, Morris H. Smith, Francis B. Wallace, Jacob H. Brumagim, John W. Brumagim, Benjamin M. Stilwell and Patrick W. Derham. The officers of the company are Mark Brumagim, President; Chauncey Vibbard, Vice President; Morris H. Smith, Secretary, and Francis B. Wallace Treasurer. The company is what was formerly known as the "Los Mariposas Estate" or more popularly known as the "Fremont Grant," obtained in 1851 by General Fremont from the Mexican government, and contains ten square leagues of land. Mr. Kelly brings suit as holder of 50,000 shares of the preferred and common stock of the company, valued at $5,000,000, and the nature of his application yesterday was to restrain the defendants named above and others from disposing of the property embraced under the original grant to another company organized in California called the "Mariposa Land and Mining Company." Mr. Kelly sets forth in his affidavit that he advanced $150,000 on the shares now in his possession, and the object of the application is to make secure this loan. He alleges further in his affidavit that the Board of Directors of the company, at the instigation of the defendants, passed resolutions authorizing, with slight reservation, the sale and conveyance to the Mariposa Land and Mining Company of California of the entire Mariposa estate, the reservation being made to give semblance of legality to the transaction. He claims that such transfer would render wholly worthless his stock. He charges, in fact, explicitly, that it is the purpose of the defendants to deprive the company of the greater part of its property, making the stock worthless. He also expresses a fear that if he should exchange his present stock for the stock of the new company that under the laws of California such stock might be assessed for pretended work and capital in such a manner as to render it as security practically worthless. On the application an affidavit was submitted to the Court setting forth that the defendant Stilwell, who is a lawyer, had devised the purposed transfer in order to render Mr. Kelly's stock of little or no value. Judge Davis granted a temporary injunction, making the same returnable on the 14th inst., when the question of its permanency will come up for argument. The injunction enjoins the defendants from parting with any of the property or assets of the company, and from permitting lithographic stones of the New York Company to be altered so as to print the certificates of the new company organized in California. There is a prospect of a lively legal contest when the case comes up for argument. It is urged by Mr. Kelly that if the device resorted to by the defendants to render his stock worthless can be successful then there is very little security in holding any stock of this character as collateral, as then there would be nothing to prevent the managers of any company from going into another State, organizing a company there and selling out to that company all the property of the New York company, and thereby render its stock utterly worthless. As will be seen, the case is one of great interest to bankers and others investing in this kind of securities.

THE ERIE RAILWAY INJUNCTION.

The case of Arnott against the Erie Railway, in which an ex parte injunction and order to show cause has been granted, came before Chief Justice Davis in Supreme Court, Chambers, yesterday, that being the return day. Neither side was ready to argue the merits of the motion as a whole, but ex-Judge Shipman, as counsel for defendants, used the affidavits of Mr. Alexander, an officer of the company, and of Mr. Hancock, a clerk of Duncan, Sherman & Co., to show that the company did not propose to issue or use any of the new ten-million bonds, except so far as they had already exchanged them for the old bonded debt of the company—that is to say, they had exchanged seventy-eight of the new bonds for an equal number of the first mortgage bonds of the Buffalo, New York and Erie Railway Company, and they were in the hands of innocent holders, and they had also exchanged 124 new bonds for an equal number of the second mortgage bonds. They now asked permission to exchange new bonds under the $10,000,000 mortgage for the balance of the second mortgage debt of the road due, that is, $256,000, and go on and make exchanges to the full amount of the old bonded debt, $2,380,000. Judge Davis, after a reply from Judge Barrett and Mr. John L. Hill, counsel for plaintiff, determined to modify the injunction so as to permit the Buffalo, New York and Erie Railway Company to pay interest on the 202 new bonds which it had exchanged for the seventy-eight first mortgage bonds and the 124 second mortgage bonds. He denied the application as to the balance. The argument of the main motion was postponed until next Tuesday.

THE SCHWAB HABEAS CORPUS.

Sigismund Schwab, the liquor dealer convicted of selling liquor without license, was brought yesterday on a writ of habeas corpus before Judge Davis, in Supreme Court, Chambers, with a view of having him admitted to bail, in accordance with the opinion rendered by Judge Donohue, pending a decision of his case by the Court of Appeals. After a long argument between Messrs. A. Oakey Hall and John M'Keon on one side and Assistant District Attorney Rollins on the other, Judge Davis declined to take up the matter. He said he was not sitting there as a Court, nor so much a Judge as a Commissioner of the Supreme Court; Judge Donohue had pronounced on the case and he would feel restrained by the opinions of his brother Judge. Besides, under the special statute, a habeas corpus of that kind was properly returnable before the Judge who granted it. The prisoner was then remanded until another application is heard by Judge Donohue.

BUSINESS IN THE OTHER COURTS.

UNITED STATES CIRCUIT COURT.

Indictments by the Grand Jury.

Before Judge Benedict.

Judge Benedict held Court to-day in the United States Circuit Court, No. 27 Chambers street. The Grand Jury handed in several indictments, and, having announced that they had concluded their labors, they were discharged for the term. Among the indictments found are the following:—

Dennis Holland, smuggling.
John Reis, running an illicit distillery.
William Just, running an illicit distillery.
Gonzalez Sardo, manufacturing cigars without having given a proper bond to the United States.
Leipo Serapio, smuggling.
John Carroll, running an illicit distillery.
Peter Campbell, running an illicit distillery.
John Rice and William Just, conspiring to defraud the government.
Peter Campbell and John Carroll, conspiring to defraud the government.
Charles Leach, perjury.
George B. Brews, smuggling.
John B. Martinez, smuggling.
Blais du Buchet, smuggling.
Patrick Connors and Michael Gallagher, smuggling.
William H. Tindle, fraudulent bankruptcy.
D. P. Harris, smuggling.
W. P. Girard, smuggling.

SUPREME COURT—CHAMBERS.

Decisions.

By Judge Davis.

Levy vs. Van Orden.—Granted.
Weil vs. Schwarz.—Granted.
Chidester vs. Russell, No. 1.—Reference ordered.
Same vs. Same, No. 2.—Same.
Sidenberg vs. Lalor; Brennan vs. Goodstein; Rice vs. Tivoli Brewing Company; Roberts vs. Bishop; Down vs. Rogers; Devlin vs. Devlin; Nadelor vs. Marshall; Union Trust Company vs. Courtney; Cumming vs. The Mayor, &c.; Flagg vs. Scott; Phenix National Bank vs. Birdseye; Konnstann vs. Gibbons; Bart vs. Pellet; Stack vs. Zink; Equitable Life Assurance Society vs. Howell.—Orders granted.
Lanigan et al. vs. The Mayor, &c.—Allowance granted.
Hodsden vs. Nudd.—Referee's report.

SUPREME COURT—SPECIAL TERM.

Decisions.

By Judge Van Vorst.

Holloway vs. Stevens.—Motion granted.

By Judge Donohue.

Bell vs. Baggs.—Order confirming report of sale granted.

COMMON PLEAS—SPECIAL TERM.

Decisions.

By Judge Larremore.

McCabe vs. The Mayor, &c.; Walsh vs. Same; Hayes vs. Same; Purcell vs. Same; Cooke vs. Same; Hogan vs. Same; Neiss vs. Same.—Demurrers sustained with leave to plaintiffs to amend. See decisions.

COURT OF GENERAL SESSIONS.

Larcenies and Burglaries.

Before Recorder Hackett.

The first case tried in this Court yesterday was that of Mary Sheridan on an indictment charging her with stealing $7 from the person of Frederick Hirsch, on the 2d of November, as he was walking through Forsyth street. She was found guilty and sentenced to the State Prison for two years.

John Flannigan was tried and convicted of stealing a silver watch from the person of Cornelia Mastering on the 15th of November. His Honor said that he had no doubt but that Flannigan was a professional thief.

Henry Smith, who was indicted for burglariously entering the house of William Talelansky, No. 91 Mulberry street, on the 19th of November, and stealing two silver watches, pleaded guilty to the third grade of that offence.

Joseph Schwendemann, a shoemaker at Greenpoint, was convicted of receiving stolen goods. The proof was that on the 4th of November he received three calf skins and a quantity of shoe thread, valued at $30, the property of Henry Arthur, doing business at No. 86 Gold street, which were stolen by Oscar Bentheim, a clerk in his employ. These prisoners were each sent to the State Prison for five years.

Charles Stevens was also tried and found guilty of stealing a pocketbook containing $2 from John Gilmartin. The Recorder said that crimes of this class were very frequent at present, and in order, if possible, to deter others from their commission, he imposed a severe penalty, which was four years in the State Prison.

John Chatoney pleaded guilty to grand larceny. The charge was that on the 15th of September he stole a large quantity of household articles, pictures and books, the property of Louis N. De Barry, of the St. James Hotel. His Honor sent the prisoner to the State Prison for four years.

George Coggins, a sailor, pleaded guilty to carrying a concealed weapon, known as a slungshot, and was fined $25.

Samuel Cohen pleaded guilty to an attempt at grand larceny, the allegation being that on the 18th of November he stole jewelry, valued at $60, owned by Frank Bowman. He was sent to the State Prison for two years and six months.

John Pennelly, a youth, was tried upon an indictment charging him with stealing a silver watch from the person of George Gutrie, on the 10th of November, in avenue B. He was convicted and sentenced to the Penitentiary for three years and six months.

An Assault.

John Maguire, who was charged, with a number of sailors, in robbing Peter Trudell of $6 upon the 11th of November, while on board the steamer Italy, pleaded guilty to assault and battery. He was sent to the Penitentiary for one year.

Petit Larcenies.

James O'Keefe, a boy, was tried upon a charge of burglariously entering an unoccupied house in East Seventy-third street, owned by Rev. Mr. Wild, and stealing a quantity of lead pipe from the cellar. The police officer saw two boys running from the premises and succeeded in arresting O'Keefe. The jury convicted him of petit larceny.

Eva Sutta, charged with stealing $15 in money from Joseph Sail on the 18th of November, pleaded guilty to petit larceny.

These prisoners were sent to the Penitentiary for six months.

COURT OF ARBITRATION.

Freight To Be Computed According to the Terms of the Bill of Lading.

Judge Fancher has rendered the following opinion in the case of Wood, Payson & Colgate vs. C. Menelas, heard on Saturday last:—

The defendant is the consignee of 1,200 bales of jute butts, shipped at Calcutta on the 2d of June last for New York, per ship Talisman. The bill of lading was duly indorsed and transferred to him by Agenti Schilizzi & Co., a Greek house at Calcutta, having a branch in London.

The bill of lading provides that the consignees or their assigns shall pay freight "for the said goods as customary at the rate of $10 (ten gold dollars) per ton of forty cubic feet, delivered with average accustomed." The margin of the bill of lading contains the marks and numbers of the 1,200 bales, and underneath is the measurement of the same, thus:—305t. 13f. 8in.

On the arrival of the ship at New York, the plaintiffs, as her agents, caused the bales to be remeasured; and finding the remeasurement to be 319 tons, 6 feet, 3 inches, claim the freight on this latter amount, upon the ground that the freight was stipulated at so much per ton "delivered."

The defendant objects on the ground that goods liable to expansion during the voyage are subject to freight upon the measurement at the time of shipment and not on the measurement at the time of arrival at the port of destination.

The bill of lading is a contract, by which the master of the ship as agent for the owners agrees to carry and deliver the goods to the consignees or their order, dangers of the sea excepted for the stipulated freight mentioned in the bill. The word "delivered" signifies that the freight is payable on the delivery of the goods. It imports that the carriage of the goods to the place of destination is a prerequisite to the right to receive the freight. If a portion of the goods had been lost by the perils of the sea, so that the same could not be delivered at the port of destination, no freight would be earned in respect of such lost portion. To entitle the ship to full freight, the goods must be transported to the place of destination and "delivered" to the consignees or their assigns.

The word "delivered" has, therefore, its office and signification without extending its meaning to the measurement of the goods. I do not think it was intended to be employed in the sense of declaring that freight was to be paid according to the measurement of the goods when delivered. If the word can bear any such reference or construction, it could be applied only to a remnant of the goods, when a portion had been lost during the voyage. If all the goods arrive at the place of destination, their measurement is stipulated in the bill of lading. It would have been competent for the master of the vessel to have declined to receive the goods to be carried at the agreed rate. He could, at the time, have objected to the Calcutta measurement, and stipulated for freight according to the measurement when the goods should be landed. But he did not choose to do so. He accepted the goods at their stipulated weight, and is, in the absence of all objection, to be deemed bound by the bill of lading.

In the case of Bottomley vs. Forbes, 5 Bing. N. C. 121, upon a charter party engaging to pay £4 15s. per ton for goods shipped at Bombay for London, by which cotton was to be calculated at fifty cubic feet per ton; it was held, that evidence was admissible of an usage to pay according to the measurement taken at Bombay before the goods were loaded; also that the plaintiff was entitled to show in reply that his captain objected to receive the goods at the Bombay measurement, measured them when on board and delivered them on that measurement to the shippers.

In the case now under consideration there does not appear to have been any such objection, and it must be assumed that the bill of lading correctly stated the contract between the shippers and the carriers.

The bill of lading of a cargo shipped at Dantzic on board of a Prussian vessel expressed it in the margin to be 100 lasts of wheat in 2,092 bags. The consignee had purchased it for that quantity, English measure, but it did not amount to that quantity Dantzic measure, which is larger. It was held that the master was entitled to freight according to the measure in the bill of lading, although exceeding the freight computed by Dantzic measure. Moller vs. Living, 4 Taunt. 102.

Where a cargo of wheat, on which freight was payable at so much per quarter, had increased by heating from 2,664 quarters at the loading port to 2,785 quarters at the port of delivery, it was held that freight was payable on the number of quarters at the time of shipment. (Gibson vs. Sturge, 24 L. J. (N. S.) Exc. 21. It was also (see Fisher's Dig., vol. 6, p. 8,067) held that the word "delivered" found in a charter party in the precise connection in which it occurs in the bill of lading in the case under consideration, did not change the rule as to the freight. In Buckle vs. Knoop, 2 L. R. Exch. 333, by a charter party, it was agreed that a ship should sail from Bombay, there load a full cargo of cotton, proceed with it to Liverpool and deliver the same on being paid freight at the rate of "$75 per ton of fifty cubic feet delivered." The ship received at Bombay and carried to Liverpool a full cargo of cotton. It was packed at Bombay as customary in compressed bales; but, on being unloaded at Liverpool, it had expanded greatly. It was held that freight was payable on the measurement of the cotton when shipped and not on the measurement when delivered.

In the light of these authorities, and in view of the facts of this case, it must be decided that the defendant is liable for freight according to the measurement specified in the margin of the bill of lading, and not according to the measurement at the place of delivery.

TOMBS POLICE COURT.

Policy Shops Again.

Before Judge Murray.

During the last week no less than seven policy shops have (to use the police phrase) been "pulled" in the Fourth and Sixth precincts. The list of the present week was opened yesterday by the arrest of Frank Warren, of No. 139 Division street. Conrad Bauer, of No. 111 of the same street, bailed Warren in the sum of $2,000.

"At Sight."

Frank McGuire, of Graham avenue, Brooklyn, was arrested yesterday on complaint of Theodore W. Crambock, who charges him with having stolen a gold hunting case watch, valued at $135. McGuire was held in default of $2,000 bail to answer.

They Had Colds in the Head.

Hen Moss and John Pierce were held in $2,000 bail each, to answer the charge of stealing handkerchiefs to the value of $49 from John Pearce, of No. 106 Franklin street.

JEFFERSON MARKET POLICE COURT.

Purloining a Piano.

Before Judge Smith.

Mrs. Elizabeth Hunter, of 276 West Thirty-eighth street, was arraigned at the above Court yesterday on a charge of grand larceny, preferred by one Adolph Dumahaut, with S. X. Ball & Co., piano manufacturers. It is alleged that Mrs. Hunter some time ago hired a piano, valued at $450, from the above mentioned parties, and afterwards moved the instrument from the place where it was delivered (145 West Twentieth street) by the employés of the firm, without giving any notice of such removal. Mrs. Hunter was held in $1,000 bail to answer, which bail was immediately furnished by Mr. John M. Vail.

Trouble Among the Murphys.

James Murphy, of No. 136 Norfolk street, was accused by Hugh Murphy, of No. 19 Stanton street, with robbing him of $27. Hugh Murphy stated that he was a stranger in the city, and that he was induced to visit several drinking saloons by his quondam friend, James Murphy, and while in one of the places visited by them the prisoner took the above amount of money from his (the complainant's) pantaloons pocket and refused to return it. Judge Smith held the prisoner in $1,500 bail to answer at General Sessions.

Arrested on Suspicion.

Thomas McCarthy and Robert Brown, who were arrested on Monday night by Officer Reily, of the Twenty-ninth precinct, on suspicion of being connected with the horse blanket thieves who were raided upon in East Twenty-fourth street, were arraigned before Judge Smith, but remanded to await further evidence.

COURT CALENDARS—THIS DAY.

Supreme Court—Circuit—Part 2—Held by Judge Van Vorst.—Nos. 2170, 100½, 992½, 1848, 2364, 4420, 4370, 4372, 638, 2350, 2190, 2192, 835, 2314, 1776, 1600, 1984, 1760, 1822. Part 3—Held by Judge Lawrence.—Nos. 3887, 3353, 2115, 4381, 1525, 1921, 1953, 4417, 2131, 993½, 371½, 683, 2133, 2137, 2141, 2143, 2145, 2149, 2153, 2155.

Supreme Court—Chambers—Held by Judge Davis.—Nos. 28, 44, 76, 91, 103, 152, 160, 190, 191, 192, 198, 201, 217, 259, 267, 270, 271, 282.

Supreme Court—Special Term—Held by Judge Van Vorst.—Demurrers—Nos. 30, 27, 31, 32. Issues of law and fact.—42, 72, 73, 82, 98, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150.

Superior Court—General Term—Held by Judges Monell and Curtis.—Nos. 7, 10, 16, 21, 23, 27, 36, 38.

Superior Court—Trial Term—Part 1—Held by Judge Speir.—Nos. 735, 617, 711, 733, 199, 787, 763, 775, 713, 785, 671, 707, 545, 659, 507. Part 2—Held by Judge Freedman.—Nos. 724, 726, 680, 712, 738, 552, 732, 694, 1540, 38, 651, 554, 770, 718.

Common Pleas—Trial Term—Part 1—Held by Judge Larremore.—Nos. 211, 225, 228, 782, 2099, 805, 2241, 2242, 20305, 1256, 1231, 2150, 1816, 1817, 2238. Part 2—Held by Judge Loew.—Case on, No. 1088. No day calendar.

Common Pleas—Equity Term—Held by Judge J. F. Daly.—Nos. 27, 38, 45, 48.

Marine Court—Trial Term—Part 1—Held by Judge Joachimsen.—Nos. 752, 753, 1820, 569, 653, 1114, 1329, 2531, 776, 777, 778, 779, 780, 781, 782. Part 2—Held by Judge Shea.—Nos. 1646, 1974, 1354, 771, 42, 1745, 2108, 783, 785, 786, 788, 789, 790, 791, 792. Part 3—Held by Judge Alker.—Nos. 1924, 1841, 1926, 1988, 1866, 164, 1843, 2043, 1254, 1112, 1333, 1733, 1663, 1758, 984. Part 4—Held by Judge McAdam.—Nos. 1419, 3069, 1658, 898, 1579, 1580, 1198, 1822, 1856, 1978, 616, 1617, 1659, 1719, 1220, 1721, 1777, 1698, 1541, 1616, 842, 1409, 681, 1261, 1263, 1747, 387, 1337, 1751, 1615.

Court of General Sessions—Held by Recorder Hackett.—The People vs. William Parker, robbery; Same vs. Ed. Rinaldo, felonious assault and battery; Same vs. Carl Ehrnoke, felonious assault and battery; Same vs. Nora Burrill, felonious assault and battery; Same vs. James Fuite and John Mason, felonious assault and battery; Same vs. Henry Hartman, felonious assault and battery; Same vs. John Taylor, grand larceny; Same vs. James Brady, grand larceny; Same vs. Henry Schaffer, grand larceny; Same vs. Marcilius Walker, grand larceny; Same vs. James Berry, grand larceny; Same vs. Thomas Grady, grand larceny; Same vs. Annie Duffy and Nancy Farrisey, grand larceny; Same vs. Peter Jordan, receiving stolen goods; Same vs. Florence Kennedy, grand larceny; Same vs. William Tucker, concealed weapon; Same vs. Paul Falk, violation of Sunday law; Same vs. Margaret Lally, larceny from the person; Same vs. Frank Leon, felonious assault and battery.

COURT OF APPEALS.

Albany, N. Y., Dec. 8, 1874.

In the Court of Appeals, Tuesday, December 8, 1874:—

Ex Parte Motions.

Genet vs. Davenport.—Motion to dismiss the appeal. Martin J. Townsend for the motion and C. Bainbridge Smith opposed.

No. 256. Pariseu vs. Pariseu.—Motion to dismiss the appeal. John Townshend for the motion. The Court took the papers.

Mitchell vs. Wheeler et al.—Motion to dismiss appeal. D. L. Follett for motion and E. Moore opposed.

Appeals from Orders.

No. 46. Acalus L. Palmer, respondent, vs. Erwin A. Hussey appellant.—Argued by Erwin A. Hussey, appellant, in person, and by Samuel Hand for respondent.

No. 42. Juliett R. C. Brady, appellant, vs. Robert F. Brundage, Sheriff, &c., respondent. Argued by C. Bainbridge Smith, of counsel for appellant, and by A. J. Parker for respondent.

No. 60. Horace B. Fry, appellant, vs. Emily Fry, respondent.—Argued by Charles E. Whitehead, for appellant, and by Joseph Larocque, for respondent.

No. 31. Anna Maria Calligan, administratrix, &c., respondent, vs. the New York Central and Hudson River Railroad Company, appellant.—Submitted.

No. 281. In the matter of the petition of freeholders, &c., respondents, vs. the Commissioners of Highways of the towns of Allegany and Carrollton, appellants.—Argued by M. M. Allen, of counsel for appellants, and D. H. Bolles, for respondents.

General Calendar.

No. 119. Sarah L. Fitch, appellant, vs. the American Popular Life Insurance Company, respondent.—Argument resumed this morning and concluded. Proclamation made, and the Court adjourned until Wednesday, December 9.

Decisions.

Judgments affirmed with costs.—Louise A. Parsons vs. Henry A. Tilden; Willis S. Nelson vs. John W. Kerr, Sheriff, &c.; Richard Rowland vs. Benjamin A. Hegeman; The Richmond County Gaslight Company vs. The Town of Middletown; William Lord vs. Alfred Wilkinson.

Judgment and order affirmed with costs.—Herman D. Walbridge vs. The Ocean National Bank of New York.

Judgment affirmed without costs to either party as against the other in this Court.—Rachel Hoppock vs. John C. Tucker, Jr.

Judgment reversed and judgment for plaintiff with costs with leave to the defendants to answer upon payment of costs.—Garret S. Ayres vs. Melitia R. H. Lawrence.

Order of General Term and Special Sessions reversed and motion granted, with costs.—Ann Catherine Kamp vs. Heinrich Kamp, otherwise known as Herman Krall.

Order affirmed and judgment absolute for defendant on stipulation, with costs.—De Witt C. Bates vs. the Cherry Valley, Sharon and Albany Railroad Company.

Motion denied, with $10 costs.—Anson Willis vs. James Weaver; James O'Brien, Sheriff, &c., vs. James McCann; Uriah Whitlock vs. James Day.

Appeal dismissed, with costs.—George E. Holyoke vs. Samuel Adams; Abner Brown vs. Webster and others and the Keeny settlement Cheese Manufacturing Company.

Calendar.

The following is an amended day calendar for Wednesday, December 9, 1874.—Nos. 4, 21, 100, 35, 97, 120, 112, 111.

THE MORRO MURDER CASE POSTPONED.

Coroner Eickhoff did not yesterday proceed with the investigation in the case of Thomas Morro, who was fatally shot on election morning, according to previous adjournment, but postponed the further hearing of the matter indefinitely. No important witnesses were present, but the friends of Morro are endeavoring to find some.

THE ELECTION MURDER.

Opening of the Trial of the Coroner.

TAMPERING WITH JURORS.

Judge Barrett to Deal Summarily with the Offenders.

Testimony Produced for the Prosecution.

At the opening of the Court of Oyer and Terminer yesterday there was a great rush for seats, and in a very short time the court room was crowded. There was, as might be expected, an unusual number of politicians occupying front seats, who watched the proceedings with the closest attention. But as the circumstances attending the murder of McKenna presented none of the exciting incidents and promised no developments of the nature that invested with such interest the trials of McFarland, of Stokes and of young Walworth, for their several deeds of shooting to the death their victims, and which so strongly attracted the female element of the strong minded stripe to attend the Court during these trials, there was not a solitary member of the latter to grace the trial of Croker.

Judge Barrett took his seat promptly at the appointed hour. Counsel for the prosecution and for the defence were also punctually on hand; and the jury having taken their seats the case was about to be formally proceeded with when a brief and unexpected interruption came from the District Attorney.

ATTEMPT TO TAMPER WITH JURORS.

District Attorney Phelps, rising, informed the Court that last night he had been informed by a gentleman who met him on the street, and who had been drawn as a juror, but who had not, however, been examined, that he (the juror) had been approached in a very suspicious manner by a person representing himself as an attorney and counsellor-at-law. The person so approaching him had, said the District Attorney, acted with very gross impropriety and flagrant lack of sense, to say the least. The juror who had been addressed obtained the card of the so-called attorney, and that card he respectfully submitted to His Honor for him to take such action as he deemed might be proper in the premises. He was bound to say that the person alluded to was not any one of the gentlemen he knew to be actively associated in the case who were then in Court.

Justice Barrett replied that he had himself been informed that another of the jurors had been addressed in a very wrong manner by an unknown person. The juror had substantially thrust aside the man, and was not aware of his name or station. In the other matter, however, he considered it his duty to direct the District Attorney to send for the juror, reduce his statement to sworn writing and to obtain such other proof as might be available, and submit the whole to the Court. If necessary he would cite the attorney before him and punish him for contempt, and also take steps to have him disbarred by the next General Term of the Supreme Court. The Court would act in a very summary manner. The District Attorney promised to give his attention to the matter.

WITNESSES EXCLUDED TILL CALLED TO TESTIFY.

By request of counsel for the prosecution, as well as those for the defence, Judge Barrett directed all the witnesses to leave the Court and not enter again until called to testify.

OPENING FOR THE PROSECUTION.

Mr. Rollins, in his opening the case to the jury, said he was confident when the evidence was laid before them that the jury would pronounce the killing of John McKenna a brutal and wicked murder by the bullet of an assassin. There was no occasion for the use of firearms; the altercation was a trivial one; it was not the cause, but was used as the pretext for the execution of a murderous purpose in the breast of the man who fired the bullet, and whether it was intended for McKenna or some other man the indictment was framed to meet both cases. Having given an outline of the testimony to be produced and illustrated it by reference to a diagram representing Second avenue from Thirty-third to Thirty-fourth street, Mr. Rollins said he would not be tempted aside from the main issues to make any comment on the extraordinary proceedings of the Coroner. If the jury believed Richard Croker fired that shot they ought to have the manliness to say it. If his hand did not fire it, then may God give him good deliverance.

THE TESTIMONY—JAMES O'BRIEN ON THE STAND.

Ex-Sheriff James O'Brien was the first witness that responded to the call of the District Attorney. He immediately took the stand, closely scrutinized by the mass of people in the court. He testified as follows:—I reside at No. 134 East Thirty-fourth street; have not been in business since I ceased to be Senator; I was a candidate for Congress at the last election, in the Tenth district; I saw Richard Croker about half-past seven on the morning of election day; I had come from my house in a car to the corner of Thirty-fourth street and Second avenue; I did not see Croker until I got to the corner; I saw Billy Borst, the two Hickeys, Croker and Costello with Sheridan, altogether; I was nodded to to step off the car, and I did so; the crowd was threatening Borst with State Prison; when I got to the crowd Croker said to me, "We'll swell your head for you to-day by 2,000;" I retorted that I did not want to talk to repeaters; with that I got struck in the mouth; I turned around to grab Croker, when others shouted out, "Give it to the ———!" I backed out as far as I could, the wrangling continuing, and, turning around, saw McKenna fall down; I saw Croker have a pistol; the two Sheridans and Hickey had pistols also; the prisoner was standing very close to McKenna when the first shot was fired.

Q. In whose hands did you first see a pistol? A. Croker was the first man whom I saw with a pistol; I saw some smoke, and next saw, right afterward, McKenna fall.

Q. When the police arrived what became of the party? A. Well, they were arrested and taken to the station house; there was some very loud talk in the station house; I did not have a great deal to say then, because I did not know their pistols had been taken away from them; I made charges against the prisoners; Croker wanted to make a charge against me for assault and battery.

CROSS-EXAMINED

by Mr. Fellows:—I had been on the morning of the election to the Jackson Club, corner Thirtieth street and Lexington avenue; I couldn't tell whether Borst was there or not; I know Michael Costello; I couldn't say if he was there; I know Owen Geoghegan; he might have been there.

Q. Don't you know that all those men took breakfast at the club? A. No sir, I do not; I have never been in Owney Geoghegan's place.

Q. Never? A. Never.

Q. Do you know whether Mike Costello, Borst, Hogan and Geoghegan are residents of your Congressional district or not? A. I don't know that they are.

Q. Do you know a man in that district called the "Brute?"

Counsel objected, and the question was not answered.

Q. Do you know at whose solicitation the men I have mentioned appeared in your district that morning? A. No.

Q. Were they there at your request? A. I don't know.

Q. Do you know if they were there in your interest? A. I don't know.

The witness described the positions occupied by all parties to the row on the diagram. Croker and myself had been at political enmity for some years, but it was nothing that amounted to anything; just before McKenna fell I saw Croker put the pistol to his head; I feel perfectly confident that Croker was firing at McKenna and intended to kill him.

Q. Is your memory any better now than at the Coroner's inquest? A. Well, I don't know; I did not have much confidence in the Coroner's inquest; I thought it was more of a sham than anything else.

Q. Did you ever tell Mr. Nevins, a reporter for the Associated Press, that you saw Croker throw his pistol in the street after firing it? A. I don't think I ever did; I thought he gave the pistol to one of the Hickeys; I cannot swear positively that he handed his pistol to any one, but I think he gave it to Hickey, as I saw him kind o' rub up against him; I called out loudly, "Croker, you murdered that man," upon seeing McKenna prostrate on the ground; I then called on the police to arrest the parties; my words to the police were, "Arrest Croker for murder, and the others have also shot somebody;" I know both sergeants of police in that precinct; I had nothing to do with their appointments.

Q. Did you not solicit the Police Department in their behalf? A. Why, the men were on the police before I knew them.

A recess was here ordered for three-quarters of an hour.

After Recess.

James O'Brien again took the stand. It was after the shooting he called for the police to arrest that murderer, Croker; the blow came from behind that struck him, the blow he received from Croker.

Q. How, then, did you know who struck you, if it came from behind? A. I saw Croker moving back after giving me the blow; didn't see who struck me till I turned around, when I grabbed for Croker; there was a kind of scrimmage on the sidewalk; I saw McKenna move off the sidewalk and fall; from the time I was struck did not lose sight of Croker.

Counsel read from the testimony before the Coroner.

Q. "They then all pulled pistols and hallooed, 'Give it to the ———.'" Is that true? A. I said it was Hickey that cried out, "Give it to the ———."

Q. Before the Coroner you swore that it was while you were away for the police the shot was fired? (Testimony handed to witness.) A. That is what I swore, but I cannot go into everything; I don't remember swearing that they all pulled pistols; as I swore before, the first pistol I saw was with Croker.

Q. You swore that when bringing the police to arrest Croker, "I first saw McKenna, and that then he fell, and I saw Croker put the pistol to his head and fire; with that Croker handed the pistol to Hickey or some one." Is that true?

Upon these points witness was cross-examined, but his answers were not at all given in support of his previous testimony.

Witness—Hickey, after the first firing, had a pistol directed at me, and I backed away, and then he (Hickey), when Craig went to pick up McKenna, fired down at him.

To a question, in response to which witness described the position of himself, Croker and McKenna, he placed himself in front of Mr. Fellows; then he said McKenna came from there, and as he passed between us Croker fired and McKenna fell. Considerable time was lost in a vain effort to get witness to explain his testimony before the Coroner as to the relative positions of the parties at the time of the shooting—the witness having no very clear idea of the points of the compass, and continually losing all idea of his reckonings.

Q. Did you see Croker when he put the

PISTOL TO M'KENNA'S HEAD?

A. I did; I first saw the smoke and then heard the report; it was a short pistol; could not tell what kind of a pistol; had no pistol that day; had a pistol upon one occasion, eighteen years ago; drew it in an encounter with Rocky Moore; he shot at me, but I did not fire at him; don't remember upon any occasion drawing a knife upon a police captain.

This closed the cross-examination, the defence intimating to the Court and prosecution that if they deemed it necessary they would call him again.

TESTIMONY OF W. H. BORST.

William H. Borst, sworn for the prosecution, lives at No. 137 West Forty-ninth street—On the morning of the 3d of November saw Croker at Thirty-fourth street and Second avenue; the two Hickeys and Sheridan were with him; Croker was standing on the avenue facing the houses, near the corner of Thirty-fourth street; I said, "Good morning, Coroner;" he asked me what I was doing there; I saw O'Brien passing on a car; he got off and came over and said, "What is the matter?" then Croker said, "I want you thieves to get out of this;" Croker called O'Brien a thief and O'Brien called him an ingrate and a repeater; with that Croker hit O'Brien, and immediately after Hickey pulled out a pistol; O'Brien and Croker clinched and Croker backed away from him, when O'Brien called for the police; then McKenna rushed at Hickey, when Hickey retired and fired and McKenna staggered and fell; after I heard the first pistol shot I looked and saw Croker with a pistol in his hand—I think in his right hand; Stephen O'Brien went to pick McKenna up, and then George Hickey again fired at him on the ground; I ran into a doorway and when I looked out I saw the two Hickeys and Sheridan on the railroad track; they had pistols; I think eight shots were fired in all; I did not see Croker when Hickey fired, but after that I saw Croker go over to where McKenna lay on the ground and look down at him and step over him; I think I saw a pistol in Croker's hand; was afterward at the station house when Craig came in and asked Croker what he shot his cousin for.

CROSS-EXAMINATION.

Was not in O'Brien's district that morning by invitation of any one; the first pistol drawn that I saw was by Hickey; that was in full view of O'Brien; I think there was a policeman there when the first shot was fired; don't know where Costello was at that time; McKenna was going for Hickey and made a grab at him; then the shot was fired, and McKenna staggered and fell; Hickey had the pistol out; remember seeing Stephen O'Brien go out to pick up the man, and then Hickey fired again; can't say whether he fired at Stephen O'Brien or at McKenna, who was then on the ground; don't know where Croker was at the time.

Q. Did you say at the Jackson Club that morning who fired the shots? A. I said Hickey and Croker.

Michael Costello, sworn for the prosecution—The main points in the testimony of this witness were calculated to throw much light on the particulars of the fatal occurrence. During the shooting he was at the rear of the crowd; did not see McKenna shot; afterward saw pistols with Sheridan and Hickey; also saw a pistol in Croker's hand as Croker stepped off the curbstone; the pistol was elevated.

On the cross-examination as to the whereabouts of himself and the witness Borst on the previous evening, and how they spent the night, and the circumstances attending their appearance at the scene of the shooting on election morning, witness, in almost every particular, contradicted Borst's statements.

At the close of the cross-examination, the next witness required by the prosecution not answering to his name, the Court adjourned at five o'clock to ten this morning.

THE SCANDAL.

Tilton vs. Beecher—One Thousand Jurors Sworn—Argument of Counsel in the Case—Next Monday the Appointed Time.

Before Judge Neilson.

Several minutes before ten o'clock yesterday forenoon the corridors of the Kings County Court House leading to the Brooklyn City Court room were thronged with persons who were desirous of attending the celebrated trial of Theodore Tilton vs. Henry Ward Beecher, which was upon the calendar for that day. When the door leading to the court was finally opened a rush was made to cross the threshhold, but anticipating the pressure that was brought to bear to obtain ingress, two officers were placed at the entrance, who challenged every one applying for admission. They were required to explain that they were either jurors, witnesses, members of the bar, or representatives of the press. Of the latter fraternity the representation was extraordinarily great, fully fifty reporters being in attendance. Had the case been proceeded with the lack of proper accommodation would have materially inconvenienced the newspaper men. No ladies were admitted to the hall of justice, much to the chagrin of hundreds of the fair and inquisitive sex, who exhausted their gentle influence upon the court powers that be to attain that end. In the gallery, however, there was a large representation of young men whose presence could well have been dispensed with. General B. F. Tracy, General John K. Porter, Messrs. Shearman and Hill appeared in the interest of Mr. Beecher, and the plaintiff, Mr. Tilton, was represented by Messrs. Fullerton, Morris and Pryor.

Judge Neilson took his seat on the bench shortly after ten o'clock, and said that all they could do was to call the jurors and let the case stand over. The jurors called for the special panel were then instructed to answer their names as called. Frank Mallison, clerk of the court, then proceeded to call the panel of 1,000 which had been drawn, and which was composed of a most respectable class of men. Among the jurors called, but who, of course, did not respond, were Theodore Tilton, the plaintiff in the action, and Franklin Woodruff, who is a partner of "mutual friend" Moulton in business. Mr. Tilton was present during the argument which ensued.

Mr. Tracy said it might be as well, if the Court so pleased, that the jurors be permitted to take their departure, as the case could not be proceeded with to-day.

Mr. Morris said they were prepared, and their witnesses had all been subpœnaed, to go on with the case.

Mr. Shearman said that they had gone before Judge McCue last night and had obtained from the Court a stay of proceedings until such time as the plaintiff furnished them with a bill of particulars. The order would be returnable on next Thursday.

THEY DID NOT DESIRE TO GO ON

until Mr. Evarts, senior counsel, who was now absent at Washington, should return, as they desired to consult him on the subject. It would also be necessary to examine the bill of particulars, if granted, and they would suggest some day next week for going on with the case.

Mr. Morris said that if the counsel desired an early disposition of that application he did not see why it might not be disposed of now, without delay. The contingency was suggested when they made the application to have the trial of the criminal indictment set down for that day. The District Attorney had then opposed the motion on the ground that this case would certainly go on. Counsel said then that even if this case certainly went on the putting down of the criminal indictment for the same day would do no harm and would work no confusion or inconvenience. The same issue involved in this civil action is raised by the indictment—the same preparation, the same witnesses and the same proceedings are essential, though in the trial of the criminal indictment the same burden is upon us. One thousand jurors have been summoned here to-day at a great expense, and his client has been put to a great expense in preparing for this trial. His means are but limited, and these proceedings have entirely destroyed his business. It is a grievous burden upon him, while upon the other side they have means unlimited. If they want an early trial that is all the plaintiff wanted or asked for. They invited them to a trial on the indictment now before this jury; and although they were placed at the disadvantage of their having the last summing up to the jury, and although we (his client) appeared there charged with a crime, yet, with all these disabilities, they invited the contest and challenge the other side to the issue. Why not go on with the trial of the indictment against their client (Mr. Tilton) now? They had been charged with bringing this action for mercenary purposes, but they had no alternative but to bring on the trial as they had done. Could they

BE TRIED ON THE CRIMINAL INDICTMENT AT ONCE

they were ready to discontinue the civil action. More than two months have elapsed since the indictment had been filed and every attempt to bring it to trial had been met with a stay of proceedings. They did not want money; they did not want a verdict of damages, but they wanted an opportunity in this Court to vindicate their client. It is a grievous wrong that these delays should be permitted time and again to interfere with the due course of justice. They would exhaust every means in their power to have an early disposition of this issue.

Mr. Tracy submitted that it was a matter of profound regret than in a case of this grave importance no motion can be made without giving an opportunity to the counsel on the other side to make a harangue to the public, for that was all he could call the speech of counsel. As to the motion made, it was a simple suggestion that it was perfectly evident to the counsel engaged in the case that it would be impossible to move in the case to-day. In the beginning of this case the newspapers were trying it, but now the newspapers had turned it over to the courts to be tried, and they are trying to conduct the case in accordance with the rules of law and the rules of evidence. Mr. Tracy did not propose to reflect upon the plaintiff or say anything against his case, as he is responsible to a higher authority and to himself for the institution of this suit. The charge that there has been a disposition for delay on the part of this defence is gratuitous and unfounded. When this case was first presented they held that they had the legal right to know from this plaintiff the times and places in which he proposed to charge that the defendant was guilty of the offences stated in the complaint. They doing it to avoid being surprised at the trial. They claimed that it was the right of every man, however humble, to know on which points he must be prepared to assert his innocence of the charges brought against him. It was information that they could readily have accorded, for it is to be presumed that he never made these

AWFUL CHARGES AGAINST HIS OWN WIFE

and the mother of his own children, and this defendant, without knowing when and where he proposes to prove that offence was committed. They asked him to give that wife and the mother of his children and the defendant in this case the information of when and where the offences charged were committed, that they might be prepared to come into Court and establish their innocence. That right had been refused. They then appealed to the General Term of the City Court, without being successful. Next they appealed to the highest Court in the State, and he would venture to say that the case was rushed through there in a manner which has no precedent in this State. The defendant is not responsible for the delay. The Court of Appeals had decided that this Court was supposed to exercise its discretion in compelling the plaintiff to furnish the information sought for. The General Term had granted them an order, which was returnable on Thursday, and it ill became the other side to accuse them with delay. Not a moment's delay had ever been made by this defendant, and there never will be. This is a case involving greater issues and striking deeper at the foundation of morality and Christianity than any other case ever brought into a court of justice, and the counsel therefore submitted that the dignity of the administration of justice, the character of the counsel charged with the great interests, demands that no steps be taken in the proceedings of this case without deliberation and careful study, and that we proceed regularly and orderly, each party having granted to him all that the law grants and every opportunity to assert the liabilities of the defendant on the one side and to resist them on the other. As to the point of law raised touching the continuance of the trial over the term, the defence would be willing to stipulate that the case continue at the discretion of the Court.

AS TO THE CRIMINAL CASE,

he said there seemed to be a studied effort to bring it on so that the wife and mother so deeply interested for time and eternity in this case must have her mouth sealed while her husband and her accuser can stand forth and accuse his wife and the mother of his children. If they are so anxious to assassinate her would they arrange it so that her voice can be heard in favor of her vindication and the legitimacy of her offspring, and not to press a prosecution where her mouth is close.

Mr. Fullerton remarked that it appeared to be the desire to give the impression that obstacles had been thrown in the way of the trial by the prosecution. The two counsel who had spoken for the defence had so expressed themselves. The Court of Appeals has left the disposition of the motion for a bill of particulars to the City Court. He (the counsel) would guarantee to give the defence in thirty minutes the bill of particulars, and the question as to the order for a stay of proceedings could be decided then. There was no reason why the question should not be decided before the day's sun sets. He would suggest that the order before Judge McCue be modified forthwith. It had been said that the wife and mother could not be heard as a witness. To that assertion he would say truly on the criminal case, surely the defence might have influence sufficient to prevail on the District Attorney to do so, and they would give a stipulation that both mother and daughters shall be witnesses in the case. In order to show their sincerity in desiring that this trial progress he would guarantee that counsel for the plaintiff will offer no objection to continuing this trial into another month. It was absurd for the counsel on the other side to say they would consent to this trial running over to another term of the Court, as a lawyer knew full well that his consent could not give jurisdiction to a court which the law of the land does not accord. Such a consent is, therefore, worthless. Let all the blame belong, therefore, where it rightly belongs. Thus far it has been postponement after postponement, retreat after retreat,

SKULKING BEHIND THIS TECHNICALITY AND THAT TECHNICALITY

and putting off that day when we expect to prove every charge that we have made. We have made none that we cannot prove and substantiate before the jury and the world. To that responsibility counsel gladly submitted. The cause of morality and Christianity demanded it of them that these charges be made, because they were true, and, being true, they were ready to and would substantiate them. Would the counsel on the other side, he asked, go now into the other room and argue before Judge McCue that order which is made returnable on Thursday? Should the Court decide against them they would willingly give them that bill of particulars for which they are so anxious.

Mr. Tracy, in replying to Mr. Fullerton, said:—If this plaintiff made these charges under a high sense of duty to the public or to morality it is to be deeply regretted that it took him four years to find out his duty, and only saw it clearly when he found or thought he found that this defendant had interfered with him in his business arrangements. He had not accused the counsel for the plaintiff of any intention to delay this cause, and he had never impugned his motives, although he had never entered any Court where they had not cast imputations upon the counsel for defence. An orderly motion had been made to the Special Term because Mr. Evarts, who they desired to consult, was absent in Washington, and it was the intention of that counsel to argue the motion for a bill of particulars, as the matter is in the discretion of the Court. Suppose the bill of particulars is granted and the plaintiff has it here to-day. There may be charges that they have never heard of. It is not to be supposed that they can rush suddenly on to the trial of the case without even time to read the particulars charged. They should have a reasonable time given them to prepare, and then they would be ready for trial.

The case was finally set down for trial at ten o'clock on Monday morning next. The panel of jurors was called and sworn.

THE PROCTOR-MOULTON SUIT.

Francis D. Moulton, defendant in the action for damages brought by Miss Edna Dean Proctor in the United States Circuit Court, was yesterday confined to his house by a nervous attack, which will prevent, it is believed, his attendance at the trial to-day. In the event of his absence the trial will not proceed this week.

WORK OF THE CORONERS.

Coroner Kessler was yesterday notified to hold an inquest at the Morgue on the body of Robert Visia, who died in the Tombs, where he had been committed to the care of the Commissioners of Charities and Correction on a charge of insanity.

Frances Williams, a child three months old, whose mother is in the Tombs on charge of grand larceny, died in that institution on Monday night. The body was sent to the Morgue and Coroner Kessler notified.

Annie Evans, a woman thirty-three years of age, and a native of Ireland, who had been sick for some days, died suddenly. Deceased had been attended by four physicians, neither of whom, however, would give a certificate. Coroner Kessler was notified.

Charles Skin, a colored bootblack, thirty years of age, was taken suddenly ill at the corner of Grand and Thompson streets and died while on the way to the Eighth precinct station house. The body was sent to the Morgue and an inquest will be held by Coroner Woltman.

Louis Haas, a man twenty-two years of age, late of No. 109 East Broadway, died yesterday in Bellevue Hospital. About two months ago deceased was fatally injured by falling on an elevator through the hatchway of premises No. 550 Broadway. An inquest will be held by Coroner Woltman, who was notified.

The body of an unknown man, thirty-five years of age, was yesterday found lying in the basement of house No. 168 Eighth avenue, occupied by Mr. Williams. Deceased had light complexion, light hair and mustache, and wore dark blue coat and vest, brown overcoat, striped pants, Congress gaiters, black felt hat and ordinary underclothes. The body was sent to the Morgue and Coroner Kessler notified.