THE COURTS.

The Right to Extend the Elevated Railroad Across the Battery.

LIABILITY FOR BONDS PLEDGED AS SECURITY.

A New Indictment Against Charles A. Lawrence.

NOVEL TERMINATION TO A SLANDER SUIT.

An argument of considerable length was heard yesterday before Chief Justice Monell, of the Superior Court, on the motion to continue the injunction against the new elevated railroad at the suit of Jeremiah V. Spader. The company, as will be remembered, were temporarily restrained by Judge Speir from erecting their road across the Battery opposite plaintiff's premises, No. 7 Bridge street. Mr. Spader, who claims title through a conveyance by the city to Edmund Smith dated June 19, 1815, guaranteeing that neither the Battery nor Bowling Green should ever be appropriated for private use. The whole question is as to the construction of this covenant deed. Messrs. John E. Parsons and Wheeler H. Peckham appeared on behalf of Mr. Spader, and ex-Judge Emott and Edward C. Delevan represented the railroad company.

Mr. Parsons, who opened the argument, after recifing the covenants in the deed stated that the defendants assert that they succeeded to the rights of the old West Side and Yonkers Railroad, which had its charter in 1867. He then went on to say that the proposed road was traced out over that part of the Battery originally lying between high and low water mark, which, prior to March 16, 1790, composed what was known as Fort George, the title of which the Corporation held for erecting thereon defences and public buildings, and by their title they are prohibited from disposing of these lands for any other purpose whatever. The plaintiff holds title from the Corporation, and has paid a higher price for it on account of the clause referred to. The building of that road would spoil the park and depreciate plaintiff's property. He further contended that the charter of the old West Side Railroad allowed the extension of the line to the foot of Greenwich street, and that they had no power to connect with South ferry. With regard to the license from the Park Commissioners Mr. Parsons argued that those officials had no authority to control the parks for other than park uses, save through the Commissioners of the Sinking Fund. The authority of the Commissioners, he insisted, is limited, and they have no right to make any disposition of the parks by sale or anything of that kind. He urged, further, that the use of the Battery for the purpose of having a railroad run across it is a violation of the trust upon which the same was acquired by the city from the people of the State of New York under and by virtue of an act passed September 16, 1790, and of the covenant by means of which he was conveyed by the city to Edmund Smith of the premises of which he is now the owner; that the building of this railroad would greatly depreciate the value of the plaintiff's property and will prevent a full and free use of the Battery as a private park.

Judge Emott, on behalf of the defendants, handed in a verified statement of the proceedings before the Park Commissioners, which resulted in the granting of the license, and copies of various opinions and statutes; also an affidavit of James A. Cowan, secretary of the company, proving title to all the property of the defunct West Side Company. He then replied to the lengthy argument presented by Mr. Parsons. The railroad company, he said, claimed the right to build the road across the edge of the Battery under a license or with permission of the authority granted in the name of the Mayor, Aldermen and Commonalty of the city of New York and given by the Department of Public Parks, which department he claimed is vested with all the power and authority theretofore possessed, in relation to the Battery, by the Mayor, Aldermen and Commonalty of the city of New York, and any and all branches of the municipal government. The plaintiff asserts a right to complain of the exercise of this power and authority by the city on the ground that such a use of the Battery is a breach of a covenant in the deed by which the city conveyed to Smith, the plaintiff's predecessor, in June, 1815, and is also a violation of a trust created in the act of the Legislature, passed in 1790, in pursuance to release to the city of New York. The State in certain premises described in the act. No possible right of plaintiff to bring such an action can be imagined upon any other ground. He is a resident of Brooklyn. His property is used and occupied for storage purposes. Neither it nor any property of the same description is used for dwellings. The railroad does not propose to touch his property. It is situated on the corner within 308 feet of it. His property is situated on a cross street running perpendicularly to the Battery and to the railroad track. The plaintiff does not pretend that his property would be affected by the building of the road on the railroad, as a building on the Battery, so as to be affected by any use of that place or park. He must therefore claim that he is entitled to the exercise of the equitable power of the court to enjoin an injunction against this deliberate act of the public authorities, either because it is a breach of a covenant with him or because it is a breach of a trust, of which he can complain. The action of the Department of Public Parks was not based on ex parte proceedings. Public discussion was invited and arguments made by the learned counsel who now asks for this injunction and others. Reports were made on the subject by the Park Commissioners themselves and by the Landscape Architect. The opinion of the Corporation Counsel was asked and given, and in the end, against the opposition to the request of the company, and by the unanimous vote of the Commissioners, a license, revokable at any time, with his advice and approval as to form and contents. He insisted further that the license or authority given by the city to the defendants is not an appropriation of the Battery to private use or to a public use different from that to which the city is bound to appropriate it, nor is it a breach of the covenant in the deed to Edmund Smith, and that as the Battery is a question of the use in the discretion of the city authorities. He claimed that the title of the city to that part of the present Battery over which the structure is to be erected was derived from the State under the act of 1790, and that title was either from the British Crown under the Dongan and Montgomerie charters, or from the State under the act of 1821, conditionally, in the Fowler case, or as some of the judges in 1822 prescribed by the act of Congress of 1822 and the surrender and delivery thereof to the city in 1790, and that the part of the Battery in question was wholly below high water mark in 1790; that portion of the Battery over which the road was so be built was directly in front of the premises and fronting on the shore or wholly under water at all times. But, aside from this answer to the plaintiff's claim, he claimed that the railroad, in its franchises they are exercising everywhere is complete, and, to that extent, is entitled to the same and cannot be faulted as unconstitutional or unlawful. In this connection with the South ferry, their authority to reach it can be no doubt. As to the claim that this injunction should be granted in the present case, the route pursued by the company is that indicated by the Rapid Transit Commissioners, he urged that the State of New York, and the Corporation of the city of New York make no complaint of this variation. It does not conflict with the law. It will be observed that this route laid down by the Commissioners is along the edge of the Battery, that the present structure is only from five to twenty, thirty, and in one place 190 feet from the mathematical line, which is the outer line of the Battery; that this is a place where the Park Commissioners and their architect believe it to be the best and least injurious route. It is not at all an obstruction; nor is it an interference with the Battery along the sidewalk; that the courts will not, as a matter of discretion, in the exercise of their discretion, enter into a question of interference with the possession of, or reduce the "edge of the Battery" to a mathematical line, and that, independent of all this, the city has the power to grant it for the use of the territory, from the consent and license of the city, without resorting to the powers of the act of Rapid Transit Commissioners. At the conclusion of the argument Judge Monell took the papers.

PLEDGED BONDS.

On the failure of Henry Clews & Co. in this city and Clews, Habicht & Co., of London, Henry Henequin & Co., of France, had $29,000 of Toledo, Peoria and Warsaw Railroad bonds deposited in the city house for $6,000 with the London house. These bonds had in the meantime pledged by Clews & Co. to Butterfield & Co. for loans amounting to about $700,000, and being unable to secure them again they afterwards gave Henequin & Co. twenty-nine first mortgage bonds of the Burlington, Cedar Rapids and Minnesota Railroad in lieu of the transferred pledged bonds. Butterfield & Co. refused to give up these bonds. They hold them for the latter as security for the loans, and a suit was therefore brought in the Superior Court, which came up for trial yesterday. It was contended for the Butterfields that they accepted the pledge in good faith and they were not aware of the arrangement made between Clews & Co. and the plaintiffs. The complaint was dismissed against the Butterfields.

THE LAWRENCE CASE.

The case of Charles A. Lawrence, which has been in the United States Court for a long time, will come up again next Monday for trial upon the application of District Attorney Bliss. At the last term of the Circuit Court Lawrence, through his counsel, Mr. Tracy, refused to plead, and Judge Benedict, therefore, ordered a plea of not guilty to be entered for him. His counsel held that he should have been tried for only one offence, the one under which he was extradited, and pleaded this in abatement, but this plea was overruled by Judge Benedict. The new indictment is substantially the same as the previous one, and contains a larger number of counts. It is a serious question if the trial will ever begin or ever terminate. It has been several times asserted that Lawrence was about to make a confession which would implicate a number of officials, and District Attorney Bliss as an officer would not let him. It is stated that Lawrence's confession would not be made to the government, and Lawrence's counsel has expressed the belief that he had not been a party to any such arrangement. A few evenings since a visitor to Ludlow Street Jail found Lawrence in such good spirits and his manner during the conversation was exceedingly confident. Legally speaking, the refusal of Lawrence's counsel to plead will not retard the trial, and both sides will be ready to go on. It is said that Mr. Sidney Webster will be retained in the case as special counsel for the government.

VIRTUE VINDICATED.

Mary Biagiatti, a fair daughter of sunny Italy, and but eighteen years of age, learning that she had been slandered in respect to her virtue by one of her countrymen, named John Dalbert, sought, through her guardian, such reparation as the courts could give her. With this view suit was brought in the Marine Court to recover damages against the slanderer, which came to a conclusion yesterday, before Judge McAdam. Numerous witnesses were examined on both sides, and the judge, holding the words spoken by the defendant to have been slanderous and untrue, gave a verdict for $100 in favor of the plaintiff. After the rendering of the verdict counsel for defendant said that the defendant had no cents in the bills. It appears that the slanders against Miss Biagiatti were uttered by the defendant on account of the latter's preference for one of her young countrymen, named Peter Bulgetti; in short, he was desirous himself to marry her until they were engaged to Judge McAdam. When, therefore, the result of the trial was announced to all parties, and the young lady and her admirers got around them, and, after considerable animated conversation, induced the young pair to the bench, and, desiring to please all, they gave the lady's virtue a double and emphatic vindication. Mr. J. Stewart Ross, who appeared for the plaintiff, and who was hastily consulted, introduced to Judge McAdam as the result of the consultation of the young people and their friends that they wanted to be joined in matrimony. In response, Judge McAdam called attention to the fact that there was a clergyman present of the same church as the parties, and suggested that he unite them in marriage on the spot promptly. To this the parties rejoined through an interpreter that it was the custom in Italy to have a civil marriage and afterward they could have the ceremony performed in the church; the civil marriage they wished to have performed then. Judge McAdam complied with their wishes.

COST OF CITY AWNINGS.

In December, 1872, the Supervisors allowed a bill of Mark Langan for awnings for the courts and court offices at $10.13. In May, 1876, a receiver of the plaintiff in supplementary proceedings obtained a peremptory mandamus to the County Auditor to audit and allow the bill, and the Auditor certified the bill to the Comptroller as allowed by him at $6,124, which amount the Comptroller paid, and suit was brought for the balance. The Court directed a verdict for plaintiff, but afterward ordered a new trial, and the plaintiff appealed to the General Term of the Court of Common Pleas. In the opinion of the Court yesterday Judge Van Brunt said the only function of the Auditor was to see that the voucher was a county charge, and he was bound to allow it at the amount for which it was audited by the Supervisors; that the examination of the claim by the Auditor in the mandamus proceedings to compel the Comptroller to pay; and that no such fact had been established; that no final hearing had been had to the mandamus there is no final judgment, and on such return being made plaintiff might object that such an audit was not a return to the mandamus. The order granting the new trial must therefore be affirmed, with costs.

EFFECTS OF A SECOND MARRIAGE.

Samuel L. Young, in an outburst of parental affection, conveyed all his real estate to his daughters, and on the same day the latter executed to him a life lease on the property. Mr. Young was then a widower and his daughters grown up and married. Subsequently on taking to himself a second wife he repented of his liberality and brought suit to have the conveyance set aside. On behalf of the daughters a motion was made for the appointment of a receiver of the property in question on the ground that Mr. Young was collecting the rents but leaving the taxes and assessments unpaid. It is further stated that the second Mrs. Young prevented his making a settlement with his daughters, and another motion was made for a substituted service, which was granted by Judge Curtis, of the Superior Court. Upon a motion, together with the one for the appointment of a receiver, was argued before Judge Speir, of the same Court. Judge Speir gave his decision yesterday refusing to vacate the order of Judge Curtis and granting the motion for a receiver.

SUMMARY OF LAW CASES.

Before the Supreme Court, General Term, yesterday was argued the case on appeal of Anna Wagenan against George Kemp, impleaded with the city. The circumstances of the case have already been published. The plaintiff was injured through a bridge constructed over an excavation in front of Kemp's premises. The Court took the papers.

In addition to the suit pending against Charles A. Lawrence in the United States Court there has been commenced in the Superior Court, to recover on a judgment for $227 27, found against him in 1859. The defence is that he is exempt from payment through having gone into bankruptcy.

Before Judge Sanford, of the Superior Court, yesterday, the defendant's demurrer was argued in the suit against Stoney Dillon and Jay Gould in the suit of the Erie Railway to stay the proceedings, both of whom were cited in the entire proceedings, both on account of fatal defects in papers in the case. The action was brought to remove Dillon and Gould from directorship of the Pacific Mail Company and prevent them from selling their stock. Messrs. Dillon and Gould were represented by the attorney of the company, H. S. Bennett, and Mr. Hatch by Messrs. Sewell and Pierce.

Ex-Sheriff Brennan's suit against the city to recover some $53,000 fees which he claimed to be due him from the city, was commenced on Thursday before Judge Van Hoesen in the Court of Common Pleas. There was a lengthy argument on the point, in which Mr. Strahan, plaintiff's counsel, urged that the bill was to be audited by the Board of Supervisors approving the bill was the main point on which the court did not be reviewed except on certiorari. Mr. Carter replied, claiming that the bill was fraudulent.

John Loehr, a match manufacturer, of No. 427 West Fifty-fourth street, was arrested yesterday upon an information charging him with presenting a fraudulent claim to the Revenue Department. The allegation is that subsequent to the destruction of his premises by fire he represented that he had destroyed a large number of revenue stamps in his possession that were never destroyed. He was taken before the Commissioners, and he waived examination. He was committed in default of bail in the sum of $5,000 to appear for trial.

DECISIONS.

SUPREME COURT—SPECIAL TERM.

By Judge Larremore.

Grissler et al. vs. Browning et al.—Demurrer overruled, with leave to answer on payment of costs.

Delafield vs. Smith et al.—Findings settled.

SUPERIOR COURT—SPECIAL TERM.

By Judge Speir.

Carter et al. vs. Youngs, &c.—Defendant's motion to vacate order of Judge Curtis denied and the plaintiffs' motion for the appointment of a receiver granted. Memorandum.

Hatch vs. Gould et al.—The order granting an injunction herein made on the 24th of April is continued. Settle order on notice the 15th inst., at eleven A. M.

Hale vs. The Omaha National Bank.—Order on remittitur.

By Judge Sedgwick.

Hennequin et al. vs. Clews et al.—Plaintiffs' complaint dismissed as against defendants Butterfield & Co. Memorandum.

Pursell vs. The Mayor &c.—Findings settled and judgment ordered.

Greer vs. Tillinghast.—Plaintiff's complaint dismissed with costs of motion and that defendant have judgment accordingly.

Wood vs. Dexter.—Writ of inquiry ordered.

Pollion vs. Lawrence, et al.—Motion denied.

COMMON PLEAS—SPECIAL TERM.

By Judge Van Brunt.

The Ferroplastic Manufacturing Company vs. Beckelhaupt.—Motion denied. Memorandum.

Robert Clark vs. Charlotte Clark.—Referee's report confirmed and decree of divorce granted.

Louisa Kueny vs. Ernest Kueny.—The proof of the service of the summons does not conform with the rule.

MARINE COURT—CHAMBERS.

By Judge McAdam.

Freeman vs. Carlton.—Defendant discharged from imprisonment.

Watrous vs. Parry.—Defendant ordered to file papers.

De Moor vs. Hamburger.—Complaint dismissed.

Cammon vs. Alny.—Proceedings dismissed.

Dong ass vs. Brown.—Third party ordered to pay $20.

Zemlicka vs. Jackson.—An order may be entered substituting William F. Howe as attorney for plaintiff in place of the attorney heretofore employed.

Leddy vs. O'Reily.—Garnishee ordered to give up property.

Wright vs. Campbell.—Amendment allowed.

Sadlier vs. Schiamonti; Hoyt vs. Fowler; Hobert vs. Banks; Whitney vs. Cassidy; Ahrens vs. Conner; Mattlage vs. Kreitlng.—Motions granted.

Place vs. Ran.—Motion granted without costs.

Markgraf vs. Kreidenwig.—Final order made.

Leeds vs. Molleson.—The motion on minutes of trial for a new trial is denied. The words spoken by the defendant at the transaction, and the plaintiff's account being somewhat unusual to support the action, the verdict of caveat emptor applies to the transactions. The judgment can be entered on the verdict, with five per cent allowance.

COURT OF GENERAL SESSIONS.

Before Recorder Hackett.

THE "ABDUCTION" OF HETTIE HALL.

Josephine Fisher and John Fisher, the latter's real name being Maurice Obermeyer, the proprietors of the disorderly house in Greene street from which the girl Hettie Hall said she was escaping when found running through Prince street dressed in fancy costume a few nights ago, were arraigned yesterday for trial. Two indictments were filed against the prisoners, one for keeping a disorderly house and the other abduction. They were tried and convicted of the first offence. When it was discovered that Assistant District Attorney Bell had no witness to sustain the second indictment, a nolle prosequi was therefore entered. The girl Hall testified to the character of the house. She admitted that she was a prostitute of a very low grade, although but a child in years, and while on the stand her manner was that of one wholly depraved. His Honor sentenced each of the prisoners to pay a fine of $250 and to undergo twelve months' imprisonment in the Penitentiary.

A BAD "PILL."

James McCormick, alias "Pill," a baker, of No. 43 Leight street, pleaded guilty to burglary in the third degree, and was sent to the Penitentiary for two years. On April 2 he broke into the bakery of Frederick Cohenwell Westfield, No. 8 Gansevoort street, but did not enter to steal any money.

STOLE TOOLS.

John Levy, of No. 523 East Twenty-ninth street, and Edward Wilson, of No. 218 East Twenty-eighth street, who stole a lot of carpenter tools from John Brady, of No. 223 West Twenty-ninth street, pleaded guilty, and were sent to the Penitentiary for six months each.

POLICE COURT NOTES.

At the Tombs Police Court yesterday, before Justice Murray, Thomas Holmes, of No. 182½ Cherry street, was held to answer in $3,000 bail on complaint of Henry Doyle, of No. 64 James street, who charged him while standing in front of his residence on Thursday afternoon the accused snatched from his vest pocket a watch valued at $15.

Charles and Madeline Gerlish were yesterday committed for trial at the Tombs Police Court on a charge of keeping a disorderly house in Hester street.

Daniel Mangan, of No. 64 Montgomery street, asked John McCarthy, of No. 203 East Forty-sixth street, who pretended to have influence at Police Headquarters, to help him to get on the police. McCarthy told him he could do it if he had $100 to pay for it. Mangan gave him $100, but with all the influence he needed, which, he said, should be given to Commissioner Erhardt. Mangan procured the money and paid it to a man whom McCarthy told him was Mr. Erhardt, at the St. Nicholas Hotel. Not receiving his appointment, Mangan complained at the Fifty-seventh Street Police Court to Justice Flammer of the matter and the result was the arrest of McCarty. Mangan was detained at the Fifty-seventh Street Police Court yesterday and remanded to enable the police to discover McCarthy accomplices, the latter refusing to tell anything.

David Fliherty, of No. 161 East Thirty-second street, was arrested on a charge of striking his wife, with seventy years of age, and struck her, until the one had knocked her down. The son was held for trial.

David Bird, of No. 25 Skilman street, Brooklyn, was arraigned on a charge of stealing a horse worth $150 from Henry Krone, of No. 175 Montgomery street, and was held for trial.

Roundsman Magan, of the Eighteenth precinct, brought into the Fifty-seventh Street Court two Italian flower girls whose only offence was selling flowers to people attending the fair in the Academy of Music and being out at a late hour. The officer exhibited a letter from the Society for the Protection of Children asking for the arrest of some of the flower girls and saying that the society might need the authority of the girls so to prison. The Court decided to send the children to the Catholic Protectory. The father of the girls was in court and said he was unable, because of his poverty, to support them, that he was in of an affection of the lungs, to do any work that in order to support his family he was obliged to send his children. He appealed to the Court to discharge the children to him and he would never send them out again at night. The request was not granted.

THE MARINE COURT CLERK.

NEW YORK, May 12, 1876.

TO THE EDITOR OF THE HERALD:—

Your issue of the 2d inst. does me injustice. It intimates (if, indeed, it does not directly charge) that I was in Albany, without the knowledge of the judges of the Marine Court, lobbying through the Legislature a bill giving me more power than "the whole bench of judges," and that all this was, fortunately, disclosed by the vote of one of the judges, who, suspecting me, took a trip to Albany and made the discovery. This statement and the inferences drawn from it are erroneous. I had no knowledge that any such bill or bill was pending or any amendment desired, and only regret that I had not known it, that I might have contradicted it at the time, but that I was assured by more than one of the judges that they not only did not believe I had betrayed their interests, but that they would promptly take occasion to vindicate me. It is now the 11th of May—eleven days since my removal—yet this promised vindication has not yet made its appearance, so I am obliged to speak for myself. The public is interested in other questions connected with my removal than those mentioned in the article I refer to, so they were not discussed in the subject before me were to be prevented. For many years I was in my statement. For many years in the past I have somewhat general in my statement. For many years in the past I have been a sort of legitimate treasury to pay the bills of the latest political organization in control of the city. In the Herald's office the lights of the employees have had to be ignored, and the Marine Court officers who had suffered in the service. The anti-Tammany organization, of which I am a secretary, looked for a reformation in the expenses, and I flatter myself I have carried out its hopes, for the City Chamberlain's office will show that my predecessors in the city in any one year, and the cost of the cleaning, that was an average of $175 per month, and that many of the four months I was in office it was over $1,200 per month. So much for the trust. As to the imputation of the Marine Court, so trust, as for me, strange as it may seem, although the city, it has not been my power to advise them, I have ever to meet the Marine Court... There is no pressure before me... the public service and the welfare of the city treasury. Still satisfied myself by calling the attention of the judges to the fact, and... sent them to the Legislature... Marine Court. I have been informed... My subordinates, the same as the assistant clerks... removed and appointees substituted, and I am told the judges have reduced the salaries of the judges from $10,000 to $7,000 per annum. I knew nothing in his particulars that I read of them in the newspapers. How hardly, during my active life, I am not permitted to visit Albany with the bill I was at the theatre in Albany when I was in office... The judges were asked to purchase this bill... one of the judges said... I wrote the letter, and knowledge of certainty three I went to Albany, their agent, to go thinking of the progress of the measures. At all this I did faithfully and honestly; and it was the judges came to Albany, I to this unexpected and to my request that one of them... I shall not lose my... was by letters and telegrams ... The judges ... I was removed the judges volunteered a statement of their grounds of complaint ... a clerk, going even further in their praises than ... as they could have been by any amount of the public... by a State Senator should they attempt to interfere with the prerogative of the judges or interfere in their independence. Of course, if dignity and independence are to be their guides in the Marine Court, I have no complaint, to the judges not to be governed by the demands of the city for and to ... tary inconvenience thereby. But with ... "Tomb ... of the public." Very respectfully your obedient,

JOHN D. COUGHLIN.

NOT THE MAN.

NEW YORK, May 12, 1876.

TO THE EDITOR OF THE HERALD:—

In the report of a "Struggle with a Lunatic" in yesterday's Herald the supposed madman's name is given as George Clark and his residence Astoria, L. I. As this is calculated to injure me if not contradicted, I beg you to publish my statement to the effect that I am the only George Clark at present residing in Astoria; that I never attempted suicide, have never been in a hospital or an insane asylum in Hoboken except a bet as the resident of Astoria to oblige by inserting this. GEORGE CLARK.

[The person who attempted suicide in Hoboken gave his name as George Clark, his residence Astoria.—Ed. Herald.]

TRIAL OF CAPTAIN LOWERY.

Captain Lowery, of the Sixth precinct, was placed on trial yesterday before Commissioners Smith, Wheeler and Nichols, on a charge of neglect of duty in failing to prevent the sale of liquor in the Atlantic Garden on Sunday, the 7th inst. Counsellor William F. Howe appeared for the accused. It was shown that the fact of the sale was the absence of the Captain had been sent to the place on the day in question, dressed in citizens' clothes, in order to get the proofs that liquor was sold. For the prosecution the proof of the patrolmen of the First district was introduced and who testified that they obtained liquor and that no ... Counsellor Howe then endeavored to show that what the Captain had called "lager," &c., did not fall into the category of intoxicating drinks.

The case was referred to the full Board.

AN EDITOR ROBBED.

Yesterday morning a woman obtained admittance to the residence of Charles A. Dana, No. 24 West Eleventh street, and when she left the house she carried a silver water pitcher worth $50 that was in the hall.

MOULTON-BEECHER.

Argument by Opposing Counsel at General Term Yesterday.

THE DIVERSE POINTS PRESENTED.

Long Statements in Reference to the Demurrer.

POUGHKEEPSIE, N. Y., May 12, 1876.

The case of Francis D. Moulton, appellant, against Henry Ward Beecher, respondent, was argued at the General Term this morning. Roger A. Pryor appeared for Mr. Moulton and Thomas G. Shearman for Mr. Beecher. It was an appeal from Judge Dykman's decision sustaining a demurrer in the famous suit for malicious prosecution against Mr. Beecher. Each counsel occupied three-quarters of an hour, and the Court House was crowded, many clergymen of this city being present. During his argument Mr. Pryor alluded in a pathetic manner to Mr. Moulton's position, asserting that he was ruined financially, having been proscribed because of his connection with Mr. Beecher in this serious trouble. Mr. Shearman's argument was confined closely to his points.

The Court took the papers and reserved its decision.

THE CASE FOR THE APPELLANT.

On behalf of the appellant counsel submitted the following as the questions raised on the appeal:—

Appeal from judgment entered on order sustaining demurrer to complaint.

Action for abuse of legal process, to plaintiff's damage. The specific points presented for review, are:—

First—Whether an order of nolle prosequi granted by the Court on motion of the District Attorney, and entered of record, be or not such an end of the prosecution as will support the action; and

Second—Whether, on the special and peculiar facts of the case, the action may not be maintained, without a technical termination of the prosecution.

The following were the points submitted:—

First—If a criminal prosecution be capable of termination by a nolle prosequi, the complaint is sufficient, the cause of action may be fully accrued and determined. The reference to the nolle prosequi was an improper mode of the termination, but only in that case actually let fact of the termination. In — the gist of the action for malicious prosecution is the want of probable cause (Johnstone vs. Sutton, 1 T. R., 544), and the averment that the prosecution was terminated is required only to show that the defendant could not, by his proof, touch the merits, but is a mere "technical prerequisite."

b—Originally, upon a false analogy to the writ of conspiracy, a technical acquittal was indispensable to the support of the action (Holt, J., in Goddard vs. Smith, 6 Mod., 262; 2 Selwyn's N. P., 1,062.) Now, however, it is enough that the prosecution be at an end, and it is certainly not necessary that the defendant be acquitted in the process (Hoo... as to discharge the offence and on the other. ... is fairly at an end of the particular prosecution against the plaintiff.

c—Hence the particular prosecution is determined. In a civil action a nolle prosequi is an entry of record a which plaintiff that on the plaintiff entered on record, or agreement by the plaintiff of his suit that he will proceed with his suit no further. The nolle prosequi is a sufficient and final termination of the prosecution.

d—A nolle prosequi on a criminal prosecution is, as we shall sustain this action, Entry of a nolle prosequi discharges the defendant from the indictment; he is discharged as a legal consequence. If the nolle be not a termination, the indictment and prosecution is pending, yet he can nevertheless be prosecuted for the same offence.

Second—On the special and peculiar facts of the case the action will lie though the prosecution was not formally ended.

a—Hitherto the argument has assumed that, until determined, a legal proceeding cannot be a ground of action. But the rule is not inflexible, and, being a mere "technical prerequisite" (supra, point 1), the condition is waived when inconsistent with the claims of substantial justice.

b—The complaint, of which all the allegations are admitted by the demurrer, exhibits a case of unique atrocity and unexampled outrage. No instance of malicious prosecution reported in the books this is as criminated by the circumstance that it was nolle prossed on the request of the defendant and against the protest of the plaintiff. It is admitted that if the prosecution were at an end plaintiff would have redress for the outrage of which he is the victim; but defendant himself is allowed to perpetuate the prosecution and so escape retribution.

THE CASE FOR THE RESPONDENT.

Mr. Shearman, on behalf of counsel for the respondent, submitted an argument on their motion to have the decision of the lower court confirmed. He stated that this is an action for malicious prosecution, and that the complaint alleges that the defendant instituted a prosecution against the plaintiff for libel, upon which he caused the plaintiff to be indicted and arrested, but that afterward the District Attorney, with the leave of the Court entered a nolle prosequi, and that the prosecution thus ended against the plaintiff was terminated in his favor. To this complaint the defendant demurred, on the ground that the complaint does not state facts sufficient to constitute a cause of action. The demurrer was sustained by Mr. Justice Dykman, at Special Term, and judgment entered thereon, from which the plaintiff appeals.

The following are the points submitted by counsel in their argument:—

First—It has been settled by innumerable adjudications, only a few of which it will be necessary to cite, that no action for malicious prosecution can be maintained unless the original prosecution was legally terminated in favor of the plaintiff before the commencement of the action.

Second—The complaint must show how the original prosecution terminated; and where it shows that it terminated in such a manner as to raise no presumption that the suit was without foundation, the complaint is bad. The prosecution can be held to have terminated in plaintiff's favor only by an acquittal or its equivalent thereto. This rule is laid down, either literally or in substance, in many cases.

Third—Any statements in the complaint asserting in general language that the original prosecution was terminated in favor of the plaintiff, or that it was terminated in a legal manner, are controlled by statement of the mode of termination set forth in the complaint; and if by the mode of termination so set forth it appears that the termination was not such as is required, then the court cannot interpret the language of the complaint to show a termination in law, but the courts disregard the general language as a mere conclusion of law, and can hold that plaintiff may be held insufficient, while, upon the trial, the evidence will be confined to a determination in the manner specifically alleged.

Fourth—A nolle prosequi, entered before the trial of an indictment, is not a final determination of the prosecution. It is no determination of anything. It is a mere declaration of the prosecuting officer that he does not then choose to prosecute further upon that indictment, and after its revocation the Court has power to try the defendant under the same indictment.

Fifth—Accordingly it has long been settled by the decisions of courts of the highest authority that an action for malicious prosecution cannot be maintained if the original prosecution was not terminated in any other manner than by the entry of a nolle prosequi.

Sixth—The cases holding that a nolle prosequi is not sufficient cannot be maintained, and if there is any difference in the case of an abandonment of a prosecution since prosecution, the considerations favor the stronger in ... whereas a nolle prosequi in criminal cases is usually entered ... the Attorney General or District Attorney that he does not consider that he could sustain the prosecution.

Seventh—The doctrine for which we contend in this case has been accepted in a large class of cases in which the prosecution was conducted by the Court ... the public jury. Some of these cases cited ... for the plaintiff ... face of this. We ... the ... questions. We ... to show ... connection with this suit.

Eighth—The averment in the complaint that the prosecution was terminated in his favor, and in opposition to the will of the plaintiff, is therefore immaterial, and cannot affect the questions here before the Court.

Ninth—The provisions of the New York Revised Statutes (2 R. S., 728, sec. 54), giving to the district attorney the power to enter a nolle prosequi with the consent of the Court, do not in any manner affect the question here presented. The Court has nothing to do with the consent ... does not ... the... the prosecution ...

Tenth—Should the Court consider the question as one of first impression, the defendant would insist that the rule hitherto established is founded upon the plainest reasons of public policy and in accordance with the general principles which have governed the tribunals of England and American law. Actions for malicious prosecution are looked upon with disfavor (per Holt, C. J., in Savile vs. Roberts, Carthew, 416; Pantoune vs. Marshall, Say., 193, for, as Lord Camden said, "Courts will be cautious of such a ... action" (Jones vs. Wilcock, 2 Wilson, 302), as Shaw, C. J., in Parker vs. ... Carrival vs. Smith, 100 Mass., 158.) Upon this principle the courts extend protection to... interfere with ... a right to ... in the prosecution of persons... crime ... of the State.

Eleventh—Even if the ... of the cases ... on the part of the plaintiff from Indiana courts should be accepted as law, yet the plaintiff has not brought himself within it ... of the case ... having a judgment discharging the plaintiff from ... upon ... of ...

Twelfth—The demurrer is well taken, and the judgment of the Court below should be affirmed, with costs.

With each of these points counsel also cited a long list of legal decisions and authorities, which, they claimed, supported their view of the case.

THE BROOKLYN BRIDGE.

A STARTLING EXHIBIT—WILL NEW YORK COMMERCE BE CRIPPLED BY ITS COMPLETION?

The question of the completion of the Brooklyn Bridge is agitating the dock men, shipowners, shipbuilders and warehousemen from Corlears Hook to Grand street as no question has moved them for fifty years. So a Herald reporter was informed yesterday, and he immediately assured himself of the fact by personal interviews with several of the most prominent property owners, shipwrights and others on South, Water and Front streets. Captain Briggs, President of the New York Floating Dry Dock Company, whose office is No. 254 South street, said:—"I speak in no adverse sense when I tell you if the wires are ever stretched across that river you will have shut up the East River to all large vessels. I have been a shipmaster for forty years, and I know the navigation of the locality thoroughly. The distance between the roadway of the bridge and the river now is admitted to be but 135 feet, and I can prove to you a list of a number of ships that have masts ranging from 140 to 205 feet. Nor is the newspapers have reported to ... " ... but enough of the ... unimportant ... of vessels. Consider, in case of this bridge being built ... the ... of a man's hand, the cost and labor of such work. There has been ... improvements and ... the conveniences of rapid transit ... J. Miller, Thomas Freebo ... Driggs, George W. Roosevelt, and others of the same class ... the highest testimony to the desire that the bridge should be built, ... are not ... an hour. A ... of ... hundred ... but ... the delay which would ensue."

THE ACT OF CONGRESS specifically states that the work of construction of the bridge should not obstruct, impair or modify navigation, and I propose to show you that ... the present plan it will prevent the passage of vessels ... forty years at ... of ..."

Mr. G. W. Roosevelt said:—"I am a sparmaker and shipwright, and have been interested in about forty vessels; I can show you many that have masts from 150 to 190 feet in height, but a great many have masts from 150 to 190 feet. If the Brooklyn bridge obstruction is completed. Here is a list of a few vessels with masts of more than 150 feet:—

HEIGHT OF SPARS FROM KELSON TO TRUCK.

Ships.	Ft.	In.	Ships.	Ft.	In.
Alexander Marshall	150	0	James Foster, Jr.	150	9
Great Western	153	3	Guy Mannering	178	0
Guy Mannering	152	6	Harvest Queen	167	3
C. H. Marshall	154	3	Star of ...	172	0
Three Brothers	206	0	Thornton	166	10
Invincible	196	6	Upsona	141	0
Australia	170	6	Neptune	152	0
John Bright	160	6	Vanguard	161	10
Black Hawk	159	6	Isaac Webb	159	0
Baltic	174	6	Webfoot	146	0
Steamships.	Ft.	In.	Steamship.	Ft.	In.
China	144	0	Granada	140	0
Great Republic	141	0	Acapulco	140	0
America	140	0	City of Peking	204	0
Japan	140	0	City of Tokio	204	0
Schooners.	Ft.	In.	Schooners.	Ft.	In.
Alcott	136	6	Dauntless	141	6
Mohawk	145	3	Robert Dillon	165	6
Wm. Mason	133	6			

Mr. Roosevelt said that the committee who recently appeared before the Aldermanic Committee on Roads, Tunnels and Bridges represented the leading shipping and warehouse interests of New York, and that when they represented their grievance it was shown that the charge was met with the reply from the Board of Aldermen that they certainly would go to the question of the bridge, and said that over a hundred feet was the space that ... bridge would allow. Here is a table I have drawn up from the following calculation," said Mr. Roosevelt, in reply to the reporter:—Lower or mainmast, 80 feet; topmast, say 45 feet; topgallant mast, royal pole, &c., say 70 feet—making 215 feet) and for each of the ... It ... with a vessel which has a height of 197 feet. Now, we have from Corlears Hook to Grand street about one mile of dock property, and with the exception of one dock there is no deep water ... for vessels; the water is deep and clear, and in the winter some vessels seek there to lay up ... the ... of the property in New Jersey, Staten Island, ... this ... completed—if it ever is—that all this shipping will be given up of the New York harbor."

Mr. James M. Thompson, a harbor master, stated that the deepest and best water of the city was east of the bridge, and that the vessels of the heaviest tonnage found wharfage there. Unless the bridge was built to the proper height it would be a serious injury to the valuation of water front property over that locality.

It will thus be seen that the great stone piers may not serve the uses contemplated for them without great opposition.

REOPENING OF BRIDGE STREET FERRY.

It is proposed to organize a new ferry company and reopen the line from Bridge street, Brooklyn, to Whitehall street, New York. The residents and property owners in that section of Brooklyn demand the ferry, and there will constitute stock of the new company.

REAL ESTATE.

The following sales comprised the business at the Exchange yesterday:—

E. H. Ludlow & Co. sold, by public auction, a three story brick house, with lot, 25x98.9, No. 16 East Twenty-ninth street, south side, between Fifth and Madison avenues, for $22,500, to G. K. Otis. Also, in foreclosure, a house, with lot, 18.6x100.11, on 104th street, south side, 133.4 feet west of Third avenue, for $4,000, to the plaintiff.

Hugh N. Camp sold, in foreclosure, a house, with lot, 25x100, No. 1,523 Third avenue, east side, 20 feet south of Eighty-sixth street, and a plot of land, 102x ... adjoining the ... on Eighty-sixth street, for $11,200, to Julius J. Lyons. Also, in foreclosure, two lots, 25x100.11, on the south side of 103d street, 25 feet ... Tenth avenue, for $2,700, to J. H. Stone, and lots, 125 feet east of Tenth avenue, for $17,650, to the plaintiff.

V. K. Stevenson, Jr., sold, in partition, a five-story brick ... lot ... No. 231 West Sixteenth street, north side, 250.2 feet west of Ninth avenue, for $16,500, to David Block, mortgagee. Also, similar house, No. 423, adjoining above, for $15,956, to Minnie Solomon.

William Kennelly sold, in foreclosure, a tract of land at Mount Washington; Twelfth ward, comprising 2½ acres, ... for $27,900, to William Whittaker. Also, lot ... 100.11x100, on northeast corner of Fourth avenue and 105th street, for $5,850, to Mary J. Munson.

R. V. Harnett & Co. sold, in foreclosure, a plot of land, ... on Hague st., ... east side of Central avenue, ... for $925, to Eliza J. Harper.

TRANSFERS.

Cliff st., e. s., 104 ft. n. of Hague st., 18.4x43.2; ...	$35,000
Riverside av., ...	400
Sturtevant, ...	10,000
...	275
...	Nom.
...	6,900
...	Nom.
...	Nom.
...	15,000
...	Nom.
...	10,000
...	55,000
...	7,650
...	35,000
...	30,000
...	49,200
...	14,000
...	15,000
...	600

LEASES.

2d av., No. 606, 5 years; ...	
...	

MORTGAGES.

...	30,000
...	11,250
...	1,000
...	500
...	7,000
...	1,500
...	2,000
...	4,000
...	15,000
...	1,600
...	12,000
...	7,000
...	1,000
...	18,000
...	20,000

THE RUSSELL MURDER.

A CRIMINAL WANTED SINCE 1871—SAN FRANCISCO SURRENDERS HIM TO BROOKLYN—THE PRISONER'S STATEMENT.

Yesterday morning John T. Halligan, the alleged murderer of William Russell, arrived in Brooklyn from San Francisco, in custody of Detective Kaiser. The prisoner was taken to Police Headquarters, where he was questioned by Superintendent Campbell, after which Halligan made a statement to the reporters. Halligan, who appears to be a quiet, inoffensive looking man, is about thirty-four years of age. He is of a fair complexion and has a slender physique. He told the narrative of the crime ... that on June 27, 1871, William Russell was foreman of a gang of 'longshoremen employed on the tobacco inspection wharf, foot of Dock street, South Brooklyn. The prisoner, who was a member of the gang, ... took up a subscription among the workmen to purchase oatmeal and ice to put in their buckets of water. Russell would not permit it ... the money ... Russell was ... toward the purchase, and Halligan remonstrated with him for his ... The deceased persisted in his refusal, and Halligan ... to ... told him to ... water elsewhere, he ... and ... he saw Russell approaching him, armed with what he ... a shoulder a roller or stick, and was ... "You are nothing but a big loafer; ... Halligan," said Russell, "what I ... you?" ... Halligan, "I don't know," Mr. Raymond, "and I took ... up with ... the ... ." ... I ... I would ... up to ... an hour. A ... I would be thrown into jail if I stayed there, and Russell would ... a few days. ... the city, where for three weeks I was ... from the shock I received. I soon after went on the Chicago, Lake City and Western Division Railroad. I was foreman ... the ... Davis, ... the wages of drivers were reduced and ... Chicago and ... San Francisco to better myself. I ... the police were after me ... to get a little money ... of the ... I would have ... to ... fourteen months before I heard of the death of Russell. The word was brought to me on ... I was ... sick and was in the ... not inclined to come on here ... gentlemen, I ... being ... corpus; but I have a wife and one child ... I went to ... they came from California. I lost a child two years ago. I saw wages were good, and ... I then ... John T. O'Brien, superintendent of the railroad company. ... I was told ... I have ... he ... ... weak and delicate health. I never knew ... to have done this ... ... I was ... have done ... Russell, ... a friend of mine ... " The prisoner was committed to the Raymond Street Jail to await trial upon an indictment found against him for the killing of Russell five years ago.

THE MURDERER FUCHS.

Efforts are now being made in behalf of Andreas Fuchs, the murderer of William Simmons, to secure a commutation of the death sentence to one of imprisonment for life. A petition is in circulation, and it is understood that all of the jurors have signed it. Unless this movement is successful Fuchs, who is quite cheerful, will be executed on Friday, June 2. He is closely watched by Deputy Sheriffs Howard and Morrow.

THREE PERSONS MISSING.

A boy named Frank Milton was sent by his mother on Tuesday last to a grocery store in the neighborhood of her residence, No. 5 Minetta street, and has not since been heard of. The boy's description is as follows:—Ten years of age, about four feet high, light hair and complexion, large blue eyes and pale, thin face. Wore a black jacket with light blue shirt, small bar pattern, dark pants, no jacket or vest and a black soft felt hat. The parents are almost distracted over the loss of their boy, and the police have searched in vain for some clew to the whereabouts of the boy.

Alexander R. Stowe, a lad of fifteen years, left his home in Yonkers on last Monday evening, about seven o'clock, and was last seen by an acquaintance at the steamboat landing about an hour later. He informed the acquaintance that he was waiting for ... the loading of a schooner which was ... and ... the place where the vessel was loading Stowe was seen to take the road leading to ... He is described as follows:—Five feet four inches in height, ... light complexion ... dark cap, prominent features, and wore dark clothes ... sent in Yonkers a ... black woollen suit. Information that would ... be ... to J. McB. Stowe, Yonkers avenue, Yonkers, N. Y.

Mayor Wickham yesterday received a letter from the ... of London Engle, who on May 3 wandered away, ... her home in ... residence in Philadelphia. He is five feet seven inches high, has chestnut hair, slightly gray; whiskers and moustache, is ... and ... grey and ... speaks ... with a ... accent ... The address of his father ... E. A. Engle, No. 955 North Sixth street, Philadelphia.

ROBBING A CHILD.

Yesterday afternoon the little daughter of Michael Greenspecht, of No. 34 Bowery, was enticed away from her father's store by an unknown woman who, on pretence of going to buy some shoes for her, took the child with her to the depot of the Flushing and Northside Railroad Company at Hunter's Point. The woman then took the child outside the depot; but in a short time afterward a lady who ... the child ... in ... with a lady present, questioned the child ... was ... the child ... her father ... New York police were ... the child, ... the New York ... for ...

THE CENTENNIAL POSTAGE ENVELOPE.

The first of the new Centennial stamped envelope made its appearance in this city yesterday. It enclosed a letter which had been deposited in the box at station A, Broadway, near Prince street, and not being recognized as legal by the Superintendent as a legal stamp, it was sent to the General Post Office for information. These envelopes, which are ... the denomination of three cents, were ... only at the Centennial Branch Post Office in Philadelphia. The ... in this ... the ... that they ... and ... for ... of ... 1876 ... November ... The design is ... corner ... represented 1776, and an express train representing 1876. The words, "Centennial, United States—three cents."

MUNICIPAL NOTES.

The Comptroller yesterday paid the rolls of laborers on the boulevards and avenues, and on roads and avenues to May 1. The amount so disbursed was $20,600.

To-day Comptroller Green will pay the pavers and laborers on small pipes $10,000 due to May 1. ... the ... announcement ... that the payrolls of all city departments will be promptly paid hereafter as heretofore, when they are ... the ... the ... for ... the ...

The sum of $18,165 20 was yesterday paid by the Comptroller for the maintenance of 1,538 children at the ... during the month of April.

... at ... Police Headquarters, No. 301 Mott street.

The Commissioners of Charities and Correction will on the 25th open bids for beef, mutton, pork and other meat, ... the ... on the 20th they will open bids for ... dry goods, groceries, hay, leather and paint.

Bills ... the ... of ... County Clerk ... their commissions on and after Monday next.

POLICE DISCIPLINE.

At a meeting of the Board of Police yesterday Commissioner Erhardt reported a set of rules from the Committee on Rules and Discipline, which, if carried out, will make collusion between patrolmen and their superior officers exceedingly difficult. The rules provide that sergeants, on returning from their tour of patrol, shall state ...

[CONTINUED ON NINTH PAGE.]