# THE COURTS.

## Answering Affidavits in the Ninth Avenue and New York Elevated Railroad Suit.

## A CLOUD OF WITNESSES FOR RAPID TRANSIT.

## Six Years' Fight Over a Check Certification.

## Important Decisions in the Bleecker Street Railroad Litigations.

The suit now pending between the Ninth Avenue Road and the New York Elevated Railroad, in which a temporary injunction was granted in the Court of Common Pleas, by Judge Joseph F. Daly, restraining the completion of additions and improvements being made on the Elevated road, has been already noticed in the HERALD. When the matter was before the Court a few days since, yesterday was fixed as the time when affidavits should be filed on behalf of the Elevated road in opposition to those on which the temporary injunction was granted against it and is sought to be continued, and they were so filed. It may be stated that the grounds on which the Ninth Avenue Company seek not only to restrain improvements on the Elevated road, but also to stop the use of the dummy engines thereon, are that the charter does not warrant the use of such engines; that the running of the road impedes public travel on the street, impedes travel on the plaintiff's cars, and frightens, demoralizes and sickens the car horses. The defendant on its side asserts its lawful right to the use of the engines; asserts that its road is a great public convenience, and that it is not plaintiff's horses that are sickened by defendant's engines, but plaintiff's finances that have become sickened by defendant's successful competition. The substance of defendant's affidavits are given below:—

Milton Courtright, the president of the New York Elevated Railroad Company during the past eighteen months, in addition to facts already published in another proceeding against the company, swears that he has been in almost constant service either as an engineer, contractor or director of or in connection with public works for over forty years, mostly in the construction and management of railways, and for a long time has been a director of several important railway companies; that for the last eighteen months he has devoted himself almost exclusively to the management, superintendence and business of the defendant's railway in said city; that he passes over its road almost daily, and knows and is familiar with the property along the line of its route from the Battery to Fifty-ninth street, and that the same is not diminished in value or injuriously affected by the construction or running of the defendant's road, but, on the contrary, the property along the line of the road is, in his judgment, increased in value, on account of the greater facilities for travel supplied by the defendant's road; that the defendant now runs some sixty trains daily, each way, between the Battery and Fifty-ninth street, carrying between 6,000 and 7,000 passengers daily; that in order to run the said road (being only one track), it is indispensable that turnouts, sidings and switches should be constructed and maintained to allow trains to pass and repass; that trains now run at intervals of about twenty minutes, and that if there were a sufficient number of turnouts, sidings and switches constructed along the line of the road trains might be run at intervals of ten minutes, and thereby better accommodate the traveling public; that it is necessary that the turnouts or sidings mentioned in the complaint in this action should be constructed for the use of the defendant's road, and the same are authorized by law and have been duly approved by the Commissioners; that the distance from the surface road car windows to the defendant's columns is such that they cannot endanger the life or limbs of the passengers in plaintiff's cars; that defendant has expended large sums of money in and about the preparing for and constructing and operating of the said Elevated railroad amounting to not less than $2,000,000.

J. A. Cowing, the secretary of the road, in addition to matter substantially the same as that contained in the foregoing affidavit of Mr. Courtright, swears that his road has been in successful operation during the past three years and more, with progressively increasing requirements and facilities; that the public requirements have constantly exceeded the facilities at any given time; that said road is not a nuisance but is a great and needed public convenience, saving about one hour daily to all passengers who ride to Thirtieth street and proportionally more time to those who ride greater distances. He denies that the defendant's railroad has heretofore interfered, or that the new constructions contemplated will interfere with the workings or beneficial enjoyment of the plaintiff's surface railroad; that the operation of defendant's road and the contemplated additions and improvements to be added thereto can in no way interfere with or injure defendant's road or cars, or passengers or horses; that on the 24th inst. deponent, at one trip from and to the Battery on the said elevated road at midday, counted 1,616 horses on Greenwich street and Ninth avenue to the Park and in the streets near to them, as follows:—From the Battery to Ninth avenue, 442; from the junction of Greenwich street to the Park, 307; from the Park to Greenwich street, 330, and from Ninth avenue to the Battery, 487; that of this number only fifteen showed any indications of excitement and none ran away or were terrified; and, in addition to the above, deponent specially observed the horses attached to plaintiff's cars, and not one of them noticed defendant's passing trains, and during the past five years that deponent has passed over the road daily he has never seen a runaway accident.

Daniel W. Wyman corroborates the allegations of the foregoing affidavits as to the necessity of the turnouts proposed for the accommodation of the public seeking the facilities of the road, and that said road is not a nuisance or an interference with plaintiff's rights, but, on the contrary, a great public benefit; and in addition thereto he swears that he is well acquainted with the Ninth Avenue Railroad and its workings, and has been so for the past five years, and almost daily and frequently many times a day has been along its line from down town to the Thirtieth and Central Park stations; that the affidavit of Henry Sherman on behalf of plaintiff as to the effect of defendant's engines on plaintiff's horses contains gross exaggerations and misstatements; that during his (deponent's) progress upon defendant's railroad and other streets and avenues under and about defendants' road and its supports he has observed that plaintiffs' horses travel on, stop and start without any heed of the defendant's road, or the cars or engines running thereon; that out of over 300 horses passed by a train on a trip from the Battery to Thirtieth street, there has not been an average more than three or four horses on the street that specially notice the passing train; that if horses are frightened it is more from other causes than the influence of the defendant's train and engines, and such occurrences are no more frequent on Greenwich street and the avenue than in other streets of the city; that he has never witnessed injury or fright occasioned to pedestrians by reason of any runaway or fractiousness of any horse or horses so put to flight or terrified by defendant's cars or engines, nor has he ever witnessed or heard of the cars of plaintiff being shattered or injured or the lives of their passengers endangered by collisions or other cause from horses excited by defendant's railroad or its cars or engines. He denies that fresh horses cannot be used on plaintiff's road since the use of defendant's engines, or that there is any difficulty in getting horses to work on plaintiffs' road without fright. He denies that any droppings fall on plaintiff's road from defendant's engines, and avers that the strength of defendant's railway is such that it can resist six times the quantity of shock or concussion which it now receives at its greatest speed, without being impaired in the slightest degree. He denies that the sickness of plaintiff's horses is caused by defendant's engines, but attributes it to the disease called epizootic, which has prevailed particularly among stage and car horses; he also denies that plaintiff's horses made mad efforts to escape or suffer any injury by attempting to do so, or that defendant's cars or engines have any such effect upon horses. He further says that he is informed and believes that as to noise and objection to the dummy engines they do not equal the noise, rumbling, rattling and concussions occasioned by the propelling of cars on said Elevated Railroad by endless cables with their heavy trucks and stationary steam engines; that the latter require large smoke stacks at intervals of every half mile, of which the people in their neighborhood loudly complained as being a great nuisance; that defendants' cars run evenly, with less noise or concussion than is produced by the passing of an ice or coal cart or an omnibus; that they pass any given point quickly, come and are gone before a non-observant person would be aware of it. He further says that the engines by which the defendant's cars are propelled are strictly such as are understood by engineers as dummy engines, the machinery wholly enclosed and excluded from view; that no smoke is emitted therefrom, but a slight and almost imperceptible escape of steam; that they are noiseless in their operation, small in size and attractive, rather than repulsive, in appearance; that the relative proportion of defendant's structure to the street and avenue is such as to indicate that the structure occupies but a line along the distance, and not occupying or appearing to occupy the whole streetway, nor any material part thereof; that there is ample room in the roadway for all the necessities of carriage way and traffic on said avenue, and for passing and repassing across plaintiffs' road between the columns of defendant's road, so that the columns of defendant's road do not obstruct or interfere, except in the slightest degree, with the ordinary use of said avenue. Michael V. Banta, a coal dealer for the past thirty-seven years in Washington street, New Church street and in the vicinity of Morris street swears that he has had for the past five years and now has from four to six horses in use in his business; that these horses have been of various ages and characters, spirited and sluggish; that during that time he has had intimate knowledge of the New York Elevated Railroad; that the same passes along in front of his premises; that he has observed the structure and workings of the road and the effects of the running of the cars and the steam dummy engines thereon, and that the same make but little noise in passing, pass in a moment of time, make no hideous noises and produce no perceptible shock or concussion; that the passing of one of the street cars on New Church street causes more rumbling noise, more concussion on the street way than do the said trains of cars; that such trains pass deponent's premises 120 times a day, but deponent's horses have shown no signs of trepidation or terror or nervousness caused by the use of such road; that they do not run away, nor are they fractious by reason thereof, but on the contrary, the trains come and go apparently unnoticed by the horses, though unhitched and feeding; that during all his observations he has not seen any horse run away or become terrified by said trains, nor seen any person or carriage dashed against the columns of defendant's road, or otherwise injured in consequence thereof, but on the contrary, he has constantly seen horses pass and repass under defendant's road while in operation wholly unaffected thereby. Stephen Pell, also unconnected with the road and a property owner on Ninth avenue, near Fiftieth street, and also in Horatio street, swears that his property referred to has improved in value by reason of the running of the Elevated road; that such road has been of great service in contributing to the building up and improving of the Ninth avenue and has increased the value of property along its route; that no tenant has abandoned a house on the line of such road or complained thereof, nor has there been any reduction of rents, and that he considers the road a great public benefit, the upper part of Ninth avenue and the streets lying adjacent thereto becoming more rapidly populated thereby.

Michael Moloughney has been a resident of Ninth avenue, near the junction with Greenwich street, for nine years past, and has seen the operation of both roads. He swears that when the Elevated road was operated by the propelling cable and stationary engines, and the trucks came to the terminus of a cable route, it passed over a large wheel or track enclosed, and nothing less than what may be called a thundering sound, frightening both horses and people, was the result; that the smoke pipes from the engine vaults were placed on the street side, and were an annoyance to the immediate neighborhood and frequent interruptions to the regular running of cars; that since the introduction of the dummy engines, the cars pass over the road quietly, attracting but little attention, and that the number thereof and of passengers have been largely increased; that he uses horses in his business of a grocer, and there are numbers of horses kept in the vicinity of the road and within hearing of its cars and engines, and all of them are wholly unaffected thereby.

Daniel Mahoney, a property owner on Ninth avenue for the past twenty years, swears the Elevated road passes his houses, which are occupied as dwellings; that he prefers the present dummy engine to the former cable and smoke stacks and thundering noise, which frightened both horses and men; that the dummies now used pass so noiselessly as to be frequently unobserved by him, even when he is outside his premises; that the running disturbs neither the tranquility of his horses or his own sleep, nor has it ever affected the Ninth avenue surface road horses to his knowledge; that it has increased the value of Ninth avenue property, and although there are some vacant houses there as elsewhere in the city none of them have become vacant because of the road. Edward Bootes, a carpenter, of No. 7 Morris street, swears that many years ago he bought property in Westchester county, intending to make a permanent residence there, but by reason of the delay in getting through the city to the steam cars going into Westchester county he was obliged to abandon that plan and compelled to go to Jersey City for a residence, where he now lives with his family; that during the past five years he has had a good opportunity to observe the effect and influence of the building of the Elevated Railroad, the operating of the same and the running of cars and engines thereon; that the road has been increased in strength and durability in the old parts thereof and substantially constructed in the newer portions; that the use of the road has induced travel on its route, which has steadily increased from year to year; that he has seen thousands of horses on the line of the said street and avenue during that time, and, with few exceptions, they have traversed such street and avenue quietly, without excitement or fright resulting from the running of defendant's trains; that he has especially observed the horses used on the Ninth avenue road, and he never saw a runaway of horses attached to their cars, nor do they exhibit evidences of terror or fright or become unmanageable, but, on the contrary, they travel along during the passing of defendant's train as unconcerned as if such trains were not near them. He further says that the operating of defendant's road in no way interferes with the working of either plaintiff's road, cars or horses, nor does it impede travel or the beneficial use of the street and avenue by the public at large, and that it is not only not a nuisance, but a great public benefit. William B. Adams has also had constant facilities for observing the operations of the Elevated road and its effect since constructed, he being a resident in that vicinity, and has also during the same time had opportunity to observe the Ninth avenue road during the same period, and he swears that plaintiff's horses are seldom if ever disturbed by the passing of trains on the Elevated road; that the horses exhibit no terror or fright, but pass along as quietly as if no unusual noise or object attracted their attention. He further says it is not true that no horses can or do travel upon said avenue without being frightened by defendant's trains, and that among the vast numbers passing through the avenue daily—hundreds of them—scarcely one manifests any uneasiness on the passing of the trains. Richard N. Billings swears that on the 23d of May inst. he remained at the corner of Ninth avenue and Twenty-seventh street, where are located the stables of the line of stages known as the Twenty-third street line, owned by Shepherd & Johnson, about one hour, to observe how the passing of the trains on the defendant's Elevated Railroad affected the horses about the stable and those passing down and up the avenue; that during that time fourteen trains of the defendant's road passed and repassed; that he did not see one horse, of all the number at and passing that point, show evidences of fright, or shy off or notice such passing trains, but all were quiet and unconcerned.

James Moylan swears that on the same 23d day of May instant, he watched at the corner of Twenty-ninth street and Ninth avenue, where the Twenty-third street line of stages have their stables, to observe the effect on the stage horses of the running of the Elevated road, and waited about one hour for that purpose; that during that time fourteen trains passed on the Elevated road and repassed that point, but the stage horses remained passive and quiet, exhibiting not the slightest evidence of terror or fright, although in several instances they were unhitched, and without the attention of their drivers. He also concurs with the other persons making affidavit, that with every opportunity to observe, he has never seen a horse of the Ninth avenue cars, or any other horse, frightened by the running of the Elevated Railroad.

There is also an additional affidavit identifying documents emanating from the Commissioners appointed under provisions of the Legislature, authorizing the Elevated road to construct switches, turnouts and sideways in connection therewith, and also authorizing and regulating the use of dummy engines in place of stationary engines, and the construction of various additional switches and turnouts, &c. Argument in the case is set down for Monday next.

## BANK CHECK CERTIFICATION.

At length, after six years' delay, the suit brought by Austin Black against the Continental National Bank, to recover $63,000 on a check given to Black & Spaulding by John Ross, and claimed to have been certified by Alfred H. Timpson, paying teller of the bank, has reached trial. The story of Mr. Black is, that the check was given in exchange for a loan of $63,000 in gold; that he refused to take the check until it was sent to the bank and certified as good, and that when, however, the check reached the Clearing House the Continental Bank refused to pay it, claiming that Ross, who had disappeared from the scene, was not reliable, and further alleging that the certification of the check was a forgery. Black commenced a suit against the bank, and the suit, as already stated, has been pending for a number of years. The bank had Black arrested for the alleged forgery, but on his trial in the Court of Oyer and Terminer, some time ago, he was acquitted, since which he has been urging the civil suit to trial. One of the main points relied upon by the defence is the peculiarity in the alleged forged check of the down stock of the letter "T" in teller. It contains three distinct parallel marks, and as Mr. Timpson, the teller, never used any other than a two-nibbed pen it is insisted it could not have been written by him.

The case came to trial yesterday before Judge Dykman, holding Supreme Court, Circuit, and Mr. Black was represented by ex-Judge Fullerton and Edward W. Goodrich as counsel, and the bank by Messrs. Luther R. Marsh and Henry L. Clinton. There was a large crowd in attendance, which shows the public interest felt in the result of the trial. Mr. Black was the only witness called for the prosecution. He stated how the check came into his possession, under the circumstances as described above. Mr. Timpson was the first witness called for the defence. He swore that he never wrote the words "Timpson, teller," on the check. On cross-examination he admitted that if the check was good he would have paid it, even if the certification was forged, but that he made no inquiries as to whether the drawer of the note had funds to meet the check. J. C. King, cashier of Clark, Dodge & Co.; Willis Van Tyne, paying teller Third National Bank; William Ried, paying teller First National Bank; Thomas Bishop, receiving teller of the Bank of the Republic; C. F. Timpson, brother of the paying teller of the Continental, and others familiar with that gentleman's signature, testified that the certification was a poor imitation of Mr. Timpson's handwriting. An offer to prove that John Ross had deposited two forged checks in the Continental, one for $54,000 and neither of which was paid, was ruled out, and the testimony was confined to the check in suit. The experts in the matter of handwriting will be called as witnesses to-day. It is probable that the trial will occupy three or four days.

## THE BLEECKER STREET RAILROAD.

Two important decisions were given yesterday in reference to the Bleecker street Railroad, respectively by Judges Donohue and Dykman. The decision of Judge Donohue is upon the application of the stockholders and bondholders of the Bleecker Street Railroad for leave to lease their road to the Twenty-third street company, which proposes to pay off their indebtedness. The application was opposed by the receiver. Judge Donohue does not give weight to this opposition, as the receiver is but the servant of those represented by counsel for the motion. The grant, he holds, was originally made to individuals, and was assignable, and has not lost its assignability. He also thinks the parties entitled to lease their road, but says that they must submit their action to the Court for approval. The charges and counter charges made by and against the receiver are referred to Isaac Dayton for investigation. The decision of Judge Dykman is on the motion made on behalf of the receiver of the Bleecker Street and Fulton Ferry Railroad for leave to issue debentures for the purpose of building an extension to connect with the Twenty-third street ferry, North River. He denies the motion.

## STATEN ISLAND FERRY LEASES.

In March, 1874, the Department of Docks leased to the North Shore Staten Island Ferry Company and to the New York and Staten Island Ferry Company pier No. 1 North River and eighty-one and a half feet of the bulkhead lying between the easterly side of this pier and the westerly side of a small pier between piers Nos. 1 and 2 for a period of ten years at $10,000 a year. The suit was brought against the city to set aside the lease and dispossess the lessees on various grounds, the leading one being that the Department of Docks had no right to execute such lease and that it should not have been executed any way without advertising for proposals for bids. A demurrer was raised that the complaint did not set forth sufficient facts to constitute a cause of action. The case was argued at length before Judge Van Vorst, holding Supreme Court, Special Term, who gave his decision yesterday, dismissing the demurrer. He holds that the lease is not void on its face; that the proper remedy is through proceedings in equity, and that proceedings in ejectment would not meet the difficulty, inasmuch as ejectment cannot be maintained for a corporeal hereditament.

## COURT OF GENERAL SESSIONS.

Before Judge Sutherland.

RAPID RETRIBUTION.

About two o'clock on the morning of Friday last James Luckey, of No. 760 Broadway, was passing through Eighth street, near Fourth avenue, when he was knocked down by Edward Thomas, who robbed him of a gold watch, chain and locket worth $50. Thomas admitted his guilt and the Court sent him to State Prison for ten years.

ANOTHER FORGER IN CUSTODY.

Detectives Field and O'Connor, of the District Attorney's office, yesterday morning arrested at his residence, No. 275 East Seventy-seventh street, Wolf Oppenheim, father of Louis Oppenheim, the particulars of whose arrest were published in the HERALD a few days ago. Wolf Oppenheim was arrested upon five indictments found against him by the Grand Jury on Monday, charging him with forging and uttering in June, 1873, five bonds of the New York, Buffalo and Erie Railroad for $1,000 each, with intent to defraud Ferdinand Hartog. He is another of the notorious Roberts-Gleason gang, most of whom have now paid the penalty of their crimes. The prisoner pleaded not guilty, and was held to bail in $2,500 on each indictment.

A DANGEROUS CUSTOMER.

Michael Brown, an old young thief, who had his abode at No. 183 Cherry street, on May 29 entered the junk store of Theodore Hayman, No. 145 Attorney street, and asked for a coat and trousers. On being told that there were none in the place he opened a jack knife and threatened to cut up the proprietor if the latter did not forthwith furnish the clothing. Hayman ran out to get an officer, and on his return found his cloth jacket, worth $15, on the person of Brown. The latter was arrested, and, pleading guilty, yesterday was sent to the Penitentiary for six months.

PETTY PLEAS AND SENTENCES.

John Penfield, who, on the night of April 29, broke into the store of John Oakes, No. 140 Maiden lane, and carried away $190 worth of nautical instruments, was sent to State Prison for three years.

William Barnes, of No. 67 Oliver street, who stole eight reams of paper, worth $70, from Nicholas Angell, No. 72 John street, on May 19, was arraigned. He said he had no home at present, and "made a living buying and selling most anything." He pleaded guilty, and was sent to State Prison for two years.

Eliza Palmer, of No. 178 Thompson street, was sent to the Penitentiary for six months. She stole $60 worth of clothing from Lucy Williams, No. 526 Broome street, the 18th of last month.

Frank Smidt, of No. 19 Lewis street, was sent to State Prison for two years upon his admission that he, on April 22, in Second street, snatched a silver watch worth $15 from the pocket of Michael Roth, No. 143 Goerck street.

Francis Campbell, of No. 400 West Seventeenth street, who, on May 18, stole a truck worth $150 from George Hasselbrock, of No. 802 Washington street, was sent to State Prison for two years.

John Smith and John Casmell were sent to the Penitentiary for one and a half years each for breaking into premises No. 221 Ninth avenue on the afternoon of May 13, and stealing a quantity of lead pipe.

## DECISIONS.

SUPREME COURT—CHAMBERS.

By Judge Brady.

Core vs. Ford.—Opinion.

Garset vs. Clark.—Order settled.

By Judge Dykman.

Harlow vs. The Bleecker Street and Fulton Ferry Railroad Company et al.—Motion denied without costs.

By Judge Donohue.

The Industrial Exhibition Company vs. Morgenthau and another.—Case settled.

Smith vs. Payton.—The defendant is entitled to his discharge.

Jessup vs. Smith.—First amendment allowed.

Rosenbach vs. The Manufacturers' and Builders' Bank.—Petition denied.

Cummings vs. Conklin.—Granted. Memorandum.

Vanderpoel vs. White et al.—Before passing on these I desire to see the findings, &c.

Galland et al vs. Stebbins.—Denied with leave to renew.

Cutting, &c., vs. Stevens et al. (Nos. 1 to 9); Tiedeman vs. Fry; Earle vs. Sturges; Woodhull vs. St. Thomas' church.—Motions granted.

The Christopher and Tenth Street Railroad Company vs. The Central Cross Town Railroad Company; Kimball vs. Newton.—Motions denied.

Sistare vs. The Bleecker Street and Fulton Ferry Railroad Company.—Opinion.

In the Matter of Kilery, &c.—Affirmed.

SUPREME COURT—CIRCUIT—PART 1.

By Judge Donohue.

Harris vs. Hirsch.—Judgment for plaintiff.

SUPREME COURT—CIRCUIT—PART 2.

By Judge Donohue.

Wardrop vs. Claflin et al.—Settled. See amendments.

SUPREME COURT—CIRCUIT—PART 3.

By Judge Larremore.

Southwick vs. The Tenth National Bank of Memphis, Tenn.—Judgment for plaintiff.

SUPERIOR COURT—SPECIAL TERM.

By Judge Speir.

Anten et al. vs. Ellingwood et al.—Decree signed and filed.

Same vs. Same.—Findings of fact and conclusions of law settled and filed.

Benner et al. vs. Duclos.—Report of referee confirmed, issue settled and jury trial ordered.

Smith vs. Cantrell.—Order continuing mechanic's lien, &c.

Hansen vs. Martin.—Injunction vacated.

Brown vs. Lowing.—Ordered on special calendar for second Friday of June.

Dupuy vs. Vandevoort.—Undertaking approved.

The Mechanics' Banking Association vs. Eccles; Fowler vs. Trenor.—Denied.

Spratt vs. King, &c; Auffmordt vs. Goldstein and another.—Memorandums.

Bruninghausen vs. Bruninghausen.—Person who made the service must be examined.

Saunders vs. Roberts.—Granted by default.

Cutting, &c., vs. Stevens—Nos. 1, 2 and 3.—Orders granted.

Blohm, &c., vs. Phillips et al.; Buninger, &c., vs. The Elastic Horse Shoe Company; Hughes vs. Rubino; The Irving National Bank vs. The Citizens' Gas Light Company; Pfister vs. Weitz; Huntoon vs. Clapp; The Stebbin's Hydraulic Elevator Manufacturing Company vs. Stebbins.—Granted.

SUPREME COURT—SPECIAL TERM.

By Judge Larremore.

Vanderbilt vs. Danseith et al.—Findings settled.

By Judge Donohue.

Marvin vs. Prentice et al.—Findings settled.

By Judge Van Vorst.

The Mayor, &c., vs. The North Shore Staten Island Ferry Company.—Demurrer overruled with liberty to defendants to answer on payment of costs.

Baron vs. Marks.—Judgment for plaintiff. Opinion.

MARINE COURT—CHAMBERS.

By Judge McAdam.

Hough vs. Falconer.—Motion granted (24 How., 44; 27 ib., 155; 22 N. Y., 555; Redfield vs. Commelora.) The proofs show the regularity of the judgment and that the plaintiff became a bona fide holder of the note in suit for full value before maturity. The defendant's motion to open or set aside the judgment will, therefore, be denied.

Rosen vs. Blucum.—The declarations and threats of the defendant, followed by the unexplained assignment of the policy, justify the attachment, and the motion to vacate will be denied.

McShane vs. Stevens.—Motion for judgment denied, but, as the action comes within the rule, it will be advanced; $10 costs to the successful party in the advance.

Williams vs. Emmet.—Motion granted, with costs. (See note Z, Wait's Code, p. 596.)

Kiernan vs. Rubino.—The motion will be granted, unless within five days the plaintiff serves his complaint and pays $10 costs. The admission on the notice of appearances cures the defendant's defective affidavit.

Emerson vs Bode; in re Goldsmidt.—Opinions filed.

Sylvester vs. Van Vleck.—Judgment for plaintiff, damages to be assessed.

Solari vs. Deiste.—Referred to W. S. Reilly.

Whyte vs. Harbison.—Motion to strike out answer granted.

Hoyt vs. Van Norman; Johnson vs. Davis; Anderson vs. Davis.—Proceedings dismissed.

Renwick vs. Struthers.—Summons amended on payment of $10 costs.

Rodman vs Roberts.—Bail reduced to $100.

Carroll vs. Polina.—Attachment ordered against defendant.

Fitch vs. Casey.—Attachment ordered against Sheriff.

Yates vs. Vose.—Attachment granted.

Price vs. Busch.—Order staying execution.

Brooks vs. Conner.—Commission granted.

Peterson vs. the Holly Manufacturing Company.—Order of publication granted.

Wheeler vs. Leland; same vs. Hudnut; Donovan vs. Spearing; same vs. Maher; Kemm vs. Kohn; Taber vs. Valkening; Tullis vs. Cocks; Lang vs. Nicholson; Bolting vs. Brunges; Olwell vs. Hoyt; The Bank of New York vs. Conner; Mead vs. Sherick; Mead vs. Kirchner; Gunther vs. Corbett; The People's Bank vs. McCool; Richard vs. Boller; Franck vs. Kratt.—Motions granted.

## COURT CALENDARS—THIS DAY.

SUPREME COURT—CHAMBERS.—Nos. 86, 94, 106, 112, 125, 208, 241, 264, 323, 329, 333, 354, 359, 360, 365, 366, 368, 369, 370, 371, 372.

SUPREME COURT—CIRCUIT—Part 3—Held by Judge Dykman.—Case on—Black vs. The Continental National Bank. No day calendar.

SUPERIOR COURT—SPECIAL TERM—Held by Judge Speir.—Nos. 14 and 38.

COMMON PLEAS—EQUITY TERM—No day calendar.

COMMON PLEAS—TRIAL TERM—Part 2—Held by Judge Van Brunt.—Nos. 2252, 2254, 2255, 2275, 2276, 2277, 2278, 2279, 2280, 2283, 2286, 2287, 2290, 2293, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2314, 2315, 2318, 2319, 2320, 2233.

All other courts have adjourned for the term.

COURT OF GENERAL SESSIONS—Held by Judge Sutherland—The People vs. Mary Smith, felonious assault and battery; Same vs. George H. Townsend, rape; Same vs. George W. Russell, John Evans and Thomas Muret, burglary; Same vs. John McCann and William Berch, burglary; Same vs. John Mulaney, burglary; Same vs. John McCarthy, burglary; Same vs. Charles Smith, burglary; Same vs. Herman Pohmer, burglary; Same vs. Benn Goldey, burglary; Same vs. John Malony, grand larceny; Same vs. Patrick Mahoney, grand larceny; Same vs. Mary Walker, grand larceny; Same vs. William J. Herron, grand larceny; Same vs. Amos M. Ross, grand larceny; Same vs. Charles McCarol, grand larceny; Same vs. Walter Skiff, grand larceny; Same vs. James Doran, grand larceny; Same vs. Kate McCran, grand larceny; Same vs. James Perry and William Reid, grand larceny; Same vs. John McCarthy and James Powers, false pretences; Same vs. John Smith and William Smith, carrying burglar's tools; Same vs. Amelia Schubert, disorderly house; Same vs. Catharine McMahon, petit larceny.

## A LONG IMPRISONMENT.

Samuel Oppenheimer, who has been confined in Ludlow Street Jail on a charge of fraudulent bankruptcy since 1870, was yesterday discharged from custody. Judge Blatchford, on motion of General Foster, United States District Attorney, quashed the indictment against Oppenheimer, who has suffered the longest imprisonment without sentence of a Court that is known in our prison annals.

## POLICE COURT NOTES.

At the Washington Place Police Court, before Justice Smith, yesterday, Charles W. and Harry Andrews, the two young men who stole $1,500 worth of jewelry from their uncle, George L. Dart, of Peru, Indiana, were arraigned on charge of Detective Von Gerichten of the Central Office. They were discharged owing to the lack of sufficient evidence. Charles W. Andrews was at once arrested on various charges of forgery. By means of a forged order, purporting to have been signed by T. C. Richards, of No. 47 Murray street, he obtained dry goods valued at $56 from J. C. Wemple & Co., of 444 and 446 Pearl street. He is also known to have forged six checks on the Nassau Bank, purporting to have been signed by Mr. Martin Grossman, chairmaker, of No. 82 Clinton street. He was committed for examination in default of $1,500 bail.

Ella Gibson, of No. 2 Depau row, was held for trial at the Washington Place Police Court yesterday for stealing a watch valued at $22 from James Carroll, of No. 108 Tenth avenue.

William Wilson, a tramp, was arraigned at the Tombs yesterday charged with stealing $4 from the residence of Dr. Bishop, No. 365 Broome street. He was held for trial.

## COURT OF APPEALS.

ALBANY, N. Y., May 31, 1876.

No. 360. In re Hart.—Argument resumed and concluded.

No. 206. Rutherford vs. Holmes.—Argued by William Gleason for appellant, L. L. Bundy for respondent.

No. 87. The Guardian Mutual Life Insurance Company vs. Kashaw.—Argued by Samuel Hand for appellant, J. Lawrence Smith for respondent.

Adjourned.

CALENDAR.

Day calendar for Thursday, June 1, 1876:—Nos. 195, 218, 221, 222, 38, 39, 203, 151.

## DEFAULTING RAILROADS.

It is a matter of astonishment that the Corporation Attorney has not pushed the suits of the city against the street car companies to recover over half a million dollars in which they are in default for license fees. Suits were ordered to be commenced by the Comptroller early in the year, and they were entered in the courts. The HERALD several months ago published a list of these defaulting railroad companies, with the indebtedness of each company. The only horse railroad company in the city that has attempted to comply with the law is the Sixth avenue line, and this company has this year taken out its license as the law requires, and paid for it in advance. A search of the city bureaus and inquiries in the courts fail to find that the authorities are pressing the suits against the defaulting companies, and probably the taxpayers will never secure any part of this $500,000 unless the Council of Political Reform make the subject one of their fights in the interest of a faithful collection of the revenue. The following are the amounts paid into the city by the various railroad companies during the year. These sums are in addition to the amounts due from some of the roads for licenses:—

| | |
|---|---|
| Avenue C line, annual rent | $1,000 00 |
| Second Avenue (Astor place extension), one-third of one per cent gross receipts | 2,600 48 |
| Dry Dock and East Broadway and Battery Railroad Company, five per cent on net receipts | 2,263 22 |
| South Ferry Railroad Company, gross receipts | 469 33 |
| Christopher Street and Tenth Street Railroad Company, three per cent gross receipts | 2,743 65 |
| Central Cross Town, three per cent gross receipts | 2,249 38 |
| New York Elevated Railroad Company, five per cent net receipts | 262 84 |
| Total paid in | $11,588 90 |

It will be noted that a number of the companies have not even paid the percentage on their receipts that the law compels them to pay into the city treasury.

## NYACK'S STRUGGLE.

The citizens of Nyack have been agitated for some time over village matters. Early in the spring a petition embracing the names of a large number of electors was presented to the Board of Trustees calling for a special election under the general law relating to incorporated villages to vote upon the proposition of abolishing the incorporation. The trustees declined to call an election, whereupon a mandamus was applied for and an order granted by Judge Barnard, of Poughkeepsie, directing the trustees to show cause why an election should not be held. The case was argued at Poughkeepsie, by Mr. Clinton McAdam for the petitioners and Mr. C. P. Hoffman for the trustees, and in due time Judge Barnard ordered a peremptory mandamus directed to the trustees. Fearing the penalties of contempt for refusal to comply with the mandate of the Court, an election was accordingly called; but before the day arrived an injunction was obtained from Judge Dykman at White Plains, upon the affidavit of David J. Blauvelt, who has made the most strenuous opposition to the efforts of a large majority of the citizens of Nyack to obtain a vote upon the proposed question. The motion for the injunction was subsequently argued at White Plains by the same counsel, and the Judge reserved his decision until a few days ago, when the motion for an injunction was dismissed. Meantime an effort was made to procure the passage of a bill through the last Legislature to cut the village of Nyack off from the operation of the present law, so that the people could not have the right to vote an oppressive incorporation out of existence. The project failed, however, and the iniquitous bill died in the House, having previously passed the Senate. Pending the injunction granted by Judge Dykman, the voters of Nyack went through the form of an election to test the sense of the people upon the question at issue, and only one negative vote was cast, out of 300 in favor of abolition. The law will probably now have free course, recourse to injunctions having been exhausted, and the probability is that the expensive luxury of incorporation as realized by the Nyackers will be totally given up.

## WHITE WHALES.

HOW THEY WERE CAPTURED AND BROUGHT TO NEW YORK.

The steamship Elenora, from Portland, which arrived at this port early yesterday morning, had, in addition to her ordinary cargo, two immense packing cases measuring about thirty feet. These cases contained specimens of the "Beluga" or white whale, the very existence of which even that eminent authority Herman Melville has denied in his "Moby Dick, or the Search for the White Whale." They were consigned to Mr. Coup of this city.

A reporter of the HERALD witnessed the disembarkation of the new arrivals, whose ingenious capture has already been described in these columns.

The whales seemed to get through the journey in good style, and when landed were in good condition. They were at once removed to their permanent quarters. There a most unfortunate accident occurred, resulting in the death of the largest specimen. Owing to the carelessness of some of the workmen some sharp iron edges had been left exposed in the tank. Directly the whales were put out of the temporary tanks into their quarters the largest commenced lashing round at a furious rate of speed, and in so doing struck its flukes against the iron, causing a wound from which it bled to death in a few hours. The loss will be nearly $4,000 to the owner.

## MEYER HEARD FROM.

Henry Meyer, a groceryman of Newark and Clinton streets, Hoboken, abandoned his wife and four children a month ago, after taking all available funds with him, and left for parts unknown. Last night Captain Donovan, of the Hoboken police force, received a telegram from Baltimore to the effect that Meyer would leave for Europe to-day. Shortly afterward Mrs. Meyer started for Baltimore, after asking Captain Donovan to telegraph to the Baltimore detectives to arrest her husband for desertion.

## BARBAROUS INHUMANITY.

A CHILD BRUTALLY BEATEN BY HER AUNT AND COUSIN.

Acting on a warrant issued by Justice Morgan, of the Essex Market Police Court, Officer Bloodgood, of the court squad, yesterday arrested Mary Robertson, of No. 5 Suffolk street, and her daughter, Lizzie Branigan, for brutally treating Annie McBride, aged six years, a niece of Mrs. Robertson. The case was brought to the attention of Justice Morgan by Mr. Alexander T. Gerner, agent of the Society for the Prevention of Cruelty to Children. Mr. Gerner informed Judge Morgan that on Monday Sebastian Braun, a young German, residing on the first floor of the rear house No. 51 Suffolk street, called at the office of the society and stated that the child was being continually beaten by the prisoners, who live on the upper floor of the house. Mr. Gerner at once called at the place and began to make inquiries among the neighbors, when he found that the information furnished by Mr. Braun was correct. He entered the rooms occupied by the prisoners, and found the woman Branigan there, with the child, a beautiful little girl, with fair hair, blue eyes and pleasing features. One of the child's eyes was almost completely closed, and her body and limbs were covered with bruises and scars, resulting from beatings received at the hands of her inhuman relatives. At first the child refused to say anything in reference to the treatment she received, but on Mr. Gerner ordering the woman Branigan to leave the room, the little girl told the whole story of her wretched life. She lifted up the carpet and showed Mr. Gerner a hole in the floor which the woman Branigan had cut with an axe. She said that Mrs. Branigan told her if she did not say she fell into the hole and so received her injuries she would kill her. The little child stated that both her aunt and cousin struck her with legs of wood, chair legs, the stove poker, or whatever weapon was near to their hands. The woman Branigan admitted to Mr. Gerner that the child's statement was true, and begged him not to proceed against her. When Officer Bloodgood went to the house to arrest the women he found their rooms in a most filthy condition and unfit for human habitation. Mrs. Robertson is a washerwoman, and her daughter claims to follow the same calling. On the prisoners being arraigned before Justice Morgan yesterday afternoon they were committed for trial. The little girl was, by order of the Court, given into the care of Matron Webb, of Police Headquarters.

## RAILWAY REDUCTION.

A reduction of about twenty-five per cent has been made in the passenger rates to and from the West on all the railroads. The Pennsylvania road has issued orders to all their offices to sell tickets until further orders at the following rates:—New York to Cleveland, $11; Detroit, $12; Cincinnati, $14; Chicago, $16; Louisville, $18; Springfield, $20 50; Kansas City, $31; San Francisco, $132. West of Chicago there is no reduction. There is only a trifling deviation from these rates by the New York Central, Baltimore and Ohio and Erie roads.

The Erie rates are:—To Cincinnati, $13; Indianapolis, $14; Louisville, $17; Chicago, $15; Milwaukee, $18; Quincy, $23; St. Louis, $19; Kansas City, $30; Omaha, $31; San Francisco, $131.

The Produce Exchange Committee on Grain report that