## "I'LL SHOW YOU WHAT I DARE DO."

[CONTINUED FROM EIGHTH PAGE.]

the bottom issues of this matter, and the committee deem it just to Mr. Davis to hear his statement, but not until all other evidence has been taken. Mr. Frost has said that he cannot now testify, and we cannot remain here longer; consequently we shall be obliged to finish taking the testimony in Washington, so as to report to the full committee.

Mr. Parsons—Mr. Frost will not go to Washington.

Chairman—He said that he would.

Mr. Frost (excitedly)—Yes, I will go before the committee at Washington and I'll pay my own expenses, too. (Laughter.)

After some further objection on the part of Mr. Parsons, who said that it would put Mr. Davis to much expense, the committee adjourned to meet in Washington December 10 proximo.

## CONTESTED WILLS.

CARDINAL M'CLOSKEY'S LEGACY—CONTINUATION OF THE MERRILL WILL CONTEST BEFORE SURROGATE CALVIN—THE DEPOSITION OF MRS. MERRILL'S PHYSICIAN.

There was another hearing before Surrogate Calvin yesterday in the Merrill will contest. As on the previous day there were a number of interested spectators who listened to the reading of the voluminous foreign depositions with marked attention. The principal contestant, Mr. George Merrill, sat beside his counsel, Mr. Parsons, to whom he frequently whispered suggestions.

The first deposition read by Mr. Parsons was that of Dr. Gregorio Fideli, of No. 44 Via Gorgonano, Rome, at one time Mrs. Merrill's physician. Preliminary to the reading of the deposition, however, Mr. McClure objected to the reading, claiming that the Doctor could not testify to Mrs. Merrill's condition obtained through professional visits, such information being privileged. This objection, however, was overruled by the Surrogate and the reading of the deposition proceeded with. The Doctor testified that the decedent suffered from heart disease and drank to such an extent as to be frequently intoxicated. The witness remonstrated with her about such excesses, when he discovered that she was often suffering from alcoholism; her condition affected her to such an extent that she sometimes wept like a child and complained bitterly that she was being robbed by a number of women; at one time during her illness a Sister of Charity who had been waiting upon her was obliged to leave on account of the violent conduct of the patient. The Doctor then went on to say that when he again saw Mrs. Merrill her demeanor and appearance were totally changed; she became careless and apparently oblivious of everything; at that time she was manifestly failing in mind and body; she would talk almost incessantly about religion, about Dr. Chatard and other religious personages; she would talk volubly, and all the time drank freely of champagne; her conduct and appearance were often spoken about before him.

WHAT A HOTEL KEEPER SAW.

The next deposition was that of Ettore Francischani, who states that he is a Chevalier of the Crown of Italy and proprietor of the Hôtel d'Europe, in Rome, and knew Mrs. Merrill very well; he became in more frequent contact with her during the two Roman seasons of 1874 and 1875; the last season she stayed at his house he noticed that she was wandering in her mind and dressed and acted peculiarly; she would change her mind by direction of her courier and others, and would go out fine days with seven or eight shawls over her and six or seven dresses each over the other; in conversation she would frequently adopt the suggestions of the last person talking to her, and acted like an imbecile person; her bills for wine, of which she was very fond, were exceptionally large; Dr. Smith began visiting her, and it soon became apparent that she was considerably under his control—so much so, in fact, that the courier remarked, "Since this priest arrived she is not the same person;" he would remain with her for hours, and wines and liquors would be sent up; the courier once said, "The priest's conduct is so bad I have a mind to throw him out of the window;" it was the general remark that she was in her second childhood.

The testimony of Joseph Tuckerman, of Paris, next read, was to the effect that when Captain and Mrs. Merrill were first in Paris they often talked of making George Merrill their heir, but when he met the decedent again her manner was entirely changed.

Mrs. Mary Ellis, whose deposition was next read, states that she keeps a boarding house in Paris and that Mrs. Merrill boarded with her in 1868; her actions were strange and attracted the notice of her other boarders; she wore an old muslin cap and would ask the other occupants of the house if she looked well in it.

The next hearing will take place on Monday.

JOHN B. JANTZEN'S TESTAMENT ATTACKED BY HIS SISTERS—THE TRIBULATIONS OF TWO BACHELOR BROTHERS.

There was another hearing yesterday, before Surrogate Calvin, in the contest over the will of the late John B. Jantzen, who was a wealthy butcher in Centre Market, who left all his estate to his brother and partner in business, Joseph Jantzen, to the exclusion of his sisters, who now contest the will. George W. Brown, one of the subscribing witnesses, was examined yesterday. He said that although the brothers were bachelors and were happily domesticated, yet the household affairs, through the intervention of unknown causes, became somewhat complicated, and the absence of a feminine head to the establishment began to be seriously felt. Remarkable disappearances of necessary household utensils were daily events. The unscrupulous marauders, whoever they were, would appropriate the spoons and butter crock, which, if replaced, would, notwithstanding the utmost care, disappear again in the most mysterious manner. The efforts of the brothers to retain their sleeve buttons properly in their place often proved abortive, and sometimes they would be astonished to find themselves shirtless. The mixed condition of the household finally became so serious that even the fires went out. Finding that the quietude of their home was being seriously jeopardized the brothers concluded that one or the other of them must become a "Benedict." Each expressed a disinclination to this measure, and at last the brothers drew lots. Joseph Jantzen was elected, and took to himself a wife.

In the further testimony Mr. Brown said that he believed the decedent was a man of sound mind. The further hearing was then adjourned.

LOUISIANNA ST. JOHN'S WILL.

The objections to the probate of the will of the late Louisanna St. John were filed yesterday in the Surrogate's office. The will is to be contested by Abby A. St. John, Sarah St. John, Olive St. John, Emily St. John, Lewis M. St. John and Marietta Wairath. The whole estate is valued at $1,500,000, and under the will there was $30,000 left in various legacies—$10,000 to the Union Cemetery and large sums to her tenants in this city and the West. The remainder is directed to be converted into cash and divided among the contestants at the end of five years. The contestants, who are nephews and nieces, claim that the decedent was unduly influenced and was incapacitated from executing the instrument in dispute.

## DECOYED FROM HIS HOME.

STRANGE EXPERIENCE OF THE SON OF A WEALTHY PHILADELPHIAN—FOUND IN NEW YORK, CRAZY, HALF STARVED AND RAGGED.

On Tuesday afternoon an officer of the Nineteenth sub-precinct brought to the Yorkville Police Court a boy of fourteen, whom he found lounging about the Grand Central Depot. The lad was perhaps as good a counterpart of Dickens' Artful Dodger so far as attire went as ever figured in a police court. The face, however, was destitute of the low cunning of the street gamin, and the wild, incoherent answers the boy gave bespoke a wandering mind. Police Justice Smith was not able to get much information out of him, but he learned that he had come from Philadelphia, had wealthy parents there and for a long time had been wandering about the country suffering every privation. The magistrate telegraphed to the Philadelphia authorities to make proper inquiries. Soon an answer came that the waif was the son of George Albertson, the stock raiser, and had disappeared six weeks ago. The boy admitted his identity, and yesterday Detective Roland came from Philadelphia to take him home. Once his identity was known the lad spoke freely of his flight. Then it transpired that it was the result of the machinations of a young man who wanted to rob him. He was a denizen of the neighborhood where Albertson had his stock farm. He easily ingratiated himself with young Joseph, who is a feeble minded lad, and set about decoying him away from home. The boy, although easily led, was too honest to rob his parents, and when he joined the decoyer and another boy on the night appointed for their flight he had nothing but a new suit of clothes and some trifles of his own with him. He got into a wagon with the others and was driven into the country. For a time the novelty of his experience pleased him, but he soon realized that his companions had other than friendly intentions toward him. They made him take his good clothes off, got him a man's coat and some other trumpery they had picked up on the way and when he was fairly deprived of any appearance of respectability they left him to shift for himself. He had a hard time wandering through New Jersey, sometimes sleeping in the open air, sometimes seeking shelter in barns and finding sustenance only in the stinted alms of farmers. At length a village poormaster procured him a railroad ticket to New York. Here the boy wandered about the streets in his odd attire, a laughing stock even for outcasts like himself, until he fell into the hands of the police.

# VIOLATED TRUST.

## A Bank Bookkeeper Embezzles Over Thirty Thousand Dollars.

## FLIGHT OF THE DEFAULTER.

### His Confession, Involving a Manufacturer, Who is Held in Forty Thousand Dollars Bail.

The facts leaked out yesterday of a defalcation in the Manufacturers and Merchants' Bank by one of their trusted bookkeepers, John P. Haws, who disappeared from the bank on August 27. The defalcation had extended over a period of about a year, and was not known to the bank until his brother brought a letter to the officials, which contained a confession of the fraud committed.

From the affidavit of Joseph Pool, the president of the bank, it appears that Louis Levinson, a manufacturer of artificial flowers, prior to October 24, 1878, had kept a deposit account under the name of E. Levinson & Co., which continued to be his deposit account until about January 11, 1879, when he opened an account under his own name and continued the same. On October 24, 1878, there was on deposit only $241 80 belonging to Levinson, or to the account of E. Levinson & Co. On or about October 24, 1878, it is alleged that "Levinson entered into a secret and fraudulent conspiracy with one John P. Haws, a bookkeeper in the bank, knowingly and with intent to cheat and defraud the bank, by means of fictitious entries and fraudulent artifices and devices whereby pursuant thereto Levinson fraudulently drew out of the bank between October 24, 1878, and August 27, 1879, the sum of $38,455 over and above all moneys on deposit with the bank on October 24, 1878, belonging to either Levinson or E. Levinson & Co., and also over and above all moneys deposited with the bank to the credit of the account of E. Levinson & Co. or to Levinson, or either of them from October 24, 1878, to August 27, 1879, well knowing at the several times at which said sum of $38,455 was drawn out by him that said sum and the whole of it was the property of the bank, and that he had no right whatever to it." The affidavit further avers that Haws, who was the bookkeeper having charge of the books of Levinson and E. Levinson & Co., left the bank on August 27 and has not since returned, but the bank was informed by a brother of the bookkeeper that he has fled to Belgium. Since then, however, he has been induced to return to Canada, where he is supposed to be now. On the above affidavit Judge Barrett issued an order of arrest against Levinson. He was lodged in Ludlow Street Jail on October 16 in default of $40,000 bail, and is still there, a motion to vacate the order of arrest having been denied by Judge Donohue. Levinson carried on the manufacture of artificial flowers corner of Mercer and Prince streets, the business being originally in the name of E. Levinson & Co., "E." being his wife. She failed in January, 1879, and the assignee sold the stock to Levinson for less than $500, and a few days ago he made an assignment for the benefit of his creditors to Samuel Zeimer, giving preferences to the amount of $3,695 22.

THE DEFAULTER'S CONFESSION.

The following letter of confession, written by Haws, is addressed to William E. Haws, his brother:—

NEW YORK, Aug. 28, 1879.

DEAR BROTHER WILL—I am in serious trouble and am obliged to leave New York. I have no alternative left but go. I have become involved at the bank and have not the courage to face the exposure. There is no use in my trying to bear it longer. My mind is so tortured that I feel unless I unburden myself to some one I shall go crazy. I can no longer endure the remorse of conscience and keep the matter to myself. I feel heartily sorry that I yielded to temptation, but of course that does not help matters now. Some of the funds were used to help a dealer of the bank, without any profit whatever to me, and some by myself in speculating to try and recover what I saw I must inevitably lose by the party I helped, as I had no way to force him to return the amount. I enclose a statement of the accounts to cover up my differences, and ask that you will send it to the bank for me at once to save them all possible confusion in the accounts.

I have nothing with which to make amends excepting information I can give, which may enable them to possibly regain the money from the party who had the sole advantage of a large amount and from those who received it from me in speculation that render them liable for it. I have taken my wife and baby with me, but God only knows what will become of us. I do not know where I shall go or what I shall do.

I will try to let you hear from me before many days. Do all you can, dear brother, to urge some of my friends or relatives to help me make some reparation to the bank. All my operations have been since September, 1878 (one year ago), when I began to keep ledger A to L.

HOW IT WAS DONE.

I give below a statement of how the matter occurred and was carried on. I hope that I may be the means of enabling the officers of the bank to regain some of the funds. The party I helped was L. Levinson, flower manufacturer, corner of Mercer and Prince streets. I at first let him have about $700 by crediting his account and charging some other account to make my ledger prove, and from that time by fair promises to make matters all right, until the amount reached $4,000. I then began to be fearful for the payment, but I still kept on letting him have $200 or $300 at a time to carry him through the past busy season, hoping that when his collections came in he would make all good, but he did not and he now owes $7,000. When I had let him have over $4,000, and I felt fearful of losing it, I began to speculate to try to make up the short amount, but only failure met my ventures, and I am now behind on my accounts $38,455, and I have given up in despair. The $20,855 which I have lost on my own account I made to get hold of Levinson, who allowed me to credit his account with $400 or $500 at a time, and would draw out the same by his check and hand it to me in money. When I would balance Mr. Levinson's book, instead of entering in the various amounts I had placed to his credit, I would hold out the amount in checks and only write enough checks in his book to make it prove with the ledger, and I would hand him the outside checks so that he could prove his checkbook with them.

I enclose herewith his bank book, which I balanced on August 26, 1879. You will see that the book was previously balanced on August 5, leaving him a balance of $72 18, and he deposited from August 5 to the last balancing (August 26) only $801 85, making a total credit of $873 53. Against the above he drew $4,481 64, thereby drawing out $3,610 more money than he really had any right to, and, to make his book balance, I only entered in the pass book $871 64 in checks, thereby making the book show a balance of $2 89, the same as balance on ledger; and this same operation was done in balancing the book several times previous, and on each occasion I handed him the checks held out to enable him to check his book. I handed him day before yesterday the onefloed book as you see it, and he had it over night, and I thought it would be valuable for the bank to have, so I got it from him yesterday morning under pretence of checking over to be sure it agreed with my ledger, and I have kept it for the information of the bank. The money he drew out and handed to me from time to time I speculated in lottery policies with ——, investing very heavily for a long time as much as $400 or $500 a day, but did not draw altogether over $2,500 to $3,000. * * *

Anything I can do to help the bank in recovering all they can I will do and only be too glad to do, if the bank will only guarantee to let me up. I have nothing to give them and had I a princely fortune I would give it all to set matters right again. Do all you can to save me from punishment in this matter and let me know what I can do on my part to help matters. If the bank wants to catch the lottery men they must work cautiously and secretly until they get hold of them. I will soon let you know or let some one know where I can be communicated with.

God bless you, dear brother, and may you by His goodness be able to help me. Affectionately, your brother,

JACK.

The following statement was inclosed in the letter:—

The following accounts on balancing the books should show the following amounts short:—

SHORT BALANCES LEDGER A TO L.

| | | | |
|---|---|---|---|
| Clark Bros | $200 | E. Booth | $200 |
| L. Burger | 1,050 | C. Brooks & Co | 9,500 |
| Citizens' Nat. Bank, Waterbury | 1,500 | S. W. Hawker | 325 |
| C. W. Astor | 5,325 | L. V. Conover & Co | 600 |
| Thomas Carter | 1,000 | G. W. Holmes | 150 |
| P. Kissam, agent | 1,370 | American Sunday School Union | 500 |
| John Bell | 1,135 | R. Carter & Bro | 300 |
| S. O. Dutton & Co | 1,000 | S. Gerard | 100 |
| T. B. Camedlin | 1,625 | G. E. L. Hyatt | 500 |
| J. E. Kelly | 1,000 | Gillis & Geoghegan | 500 |
| C. Kalman | 425 | Bridgeport W. F. Co | 1,100 |
| City National Bank, Bridgeport | 5,050 | A. Cudge | 3,000 |
| Fitzgibbons, M. & Co | 1,000 | Total | $38,455 |

Some of the other accounts will show erroneous entries, but they are all right, the entries being caused by shifting the differences from one account to another, when the accounts in which the erroneous entries were made would be short, when I would transfer the charge to another account.

Mr. Haws had been in the bank for many years, and was fully trusted, his family being of the highest respectability. He is the nephew of ex-Comptroller Haws and a protégé of the late William Orton.

Mr. Pool, the president of the bank, said, yesterday, that the loss to the bank would probably be reduced by contributions on the part of Haws' relatives and others interested to about $5,000 or $6,000.

In an interview with Mr. T. F. Wentworth, the counsel of the bank, he stated that the defalcation, upon investigation, amounted to about $37,500. The bank, he said, is in first rate condition, doing a good business, and no depositor will or can lose a penny.

A HERALD reporter called on Mr. Levinson at Ludlow Street Jail last night. Having explained the allegations made by Mr. Hawes, the reporter asked him if he desired to say anything in reply. Mr. Levinson refused to say anything at the present time, adding that the whole truth about the difficulty in which he had been placed was sure yet to be developed.

## A DIAMOND HUNT.

A few days ago Laura Parmore, of New York, went to her country residence at the Goffle, near Paterson, N. J., and while driving near that place lost a cluster diamond ring valued at $600. She advertised the fact, offering $100 reward for the recovery of the jewel. Since that time a number of the residents of Paterson have made it their occupation to go out on the Goffle road and search for the diamonds. Frequently as many as fifty are daily employed in the search, the diamond field extending over about five miles of sandy country road.

## THE COURTS.

INFELICITIOUS HOME LIFE OF THE GARDNERS.

In Supreme Court, Special Term, before Judge Van Brunt, Mr. James Gardner was permitted to tell his story in the divorce suit brought against him by his wife, Patience. Mr. Gardner to the greater part of his wife's story as already told in the HERALD gave a positive denial. According to his version of the facts his wife was constantly quarrelling with him. She would repeatedly keep company with parties, women principally, to whom he objected. She would introduce these same parties to his house without introducing them to him. He denied ever calling his wife vile names, but admitted that he did apply such names to parties with whom she associated. He objected to her church associates, not because he had any fault to find with their character, but because they were in the habit of taking his wife away from her home duties against his wishes. He admitted having objected to the picture of a Mr. Pryor, which his wife had in her album. His wife had also a picture of Pryor's wife's grave, which she proposed to have framed and hung up in the parlor. Mr. Gardner was cross-examined at great length, but did not vary materially from the story as given above. Lizzie Atkins, a colored woman, testified that Mrs. Gardner arranged to make her house a rendezvous for meeting Mrs. Clark and Mrs. Fryer. Mrs. Gardner was examined in rebuttal, but no new facts of interest were elicited. This closed the testimony, and the counsel submitted the case without argument, they agreeing to hand in their briefs on Monday.

BROUGHT TO GRIEF.

A few weeks since a considerable quantity of quinine and opium was missed from the establishment of Messrs. Frazer & Lee, of No. 20 Beekman street. Efforts to find out how the goods disappeared proved unsuccessful until Mr. George A. Shepard, a druggist, doing business at No. 681 Bedford avenue, Brooklyn, visited the firm. He said he had bought some drugs, which he afterward suspected had been stolen, from Henry Hobby, of No. 294 Gates avenue. The police authorities were communicated with, and Hobby was seen in company with Hardie Simmons, Bernard Lynagh and William Henderson, all of whom were employed by Messrs. Frazer & Lee. The four were taken into custody and confessed their guilt. Hobby, it seems, induced Simmons to steal the property and hand it over to Henderson and Lynagh, who in turn gave it to Hobby. The property was then sold, and the proceeds were divided among the parties. Simmons told the story that implicated the others. When the four prisoners were arraigned by Assistant District Attorney Rollins yesterday, in the Court of General Sessions, they pleaded guilty. Messrs. Frazer & Lee, who were not anxious that a heavy sentence should be inflicted, interposed in their behalf, and Judge Gildersleeve sentenced Lynagh and Hobby to two months in the Penitentiary and Henderson to one month. Simmons was discharged.

THE PETTIGREW-FORSHAY SUIT.

At length a conclusion has been reached to the long drawn out trial before Judge Lawrence, in Supreme Court, Circuit, of the suit brought by the heirs and administrators of the late John W. Pettigrew against Jane Forshay, who claimed to be the widow of Mr. Pettigrew, and therefore entitled to a dower right in the large estate he left. The facts of the case having so recently been fully reported in the HERALD need not be retold. The jury in its verdict yesterday upon the various issues of fact submitted to it decided that the defendant was never married to Mr. Pettigrew; that she has no claim upon the estate, and that her former lawyers, whom she charged with acting in collusion with the heirs and administrators and their lawyers, were not guilty of the accusations charged. There were fifteen issues of fact, but they were so interwoven that the above findings embodied the substantial questions to be decided.

SUMMARY OF LAW CASES.

Last June Corporal James O'Neill, of Company D, Twenty-second regiment, N.G.S.N.Y., was discharged from the service by order of Major General Alexander Shaler. He appealed to the Supreme Court, and yesterday Judge Van Brunt rendered a decision granting a peremptory mandamus requiring General Shaler to reinstate Corporal O'Neill in his rank in the regiment.

There was tried yesterday, before Judge Van Vorst, holding Supreme Court, Circuit, a suit brought by William J. Best, receiver of the German Savings Bank of Morrisania, against William Harland, its former secretary and cashier, and Charles L. Georgi and Peter Kirchhoff, his bondsmen. The testimony showed that Harland wrongfully withdrew from the bank and appropriated to his own use $2,684 70. He denied this, however, but the jury did not credit the denial, and gave a verdict for $3,341 91, the full amount claimed, with interest. Mr. Frederick Smythe appeared for the plaintiff and Messrs. Ambrose H. Purdy and Gustavus Levy for the defendants.

In Part 1 of the Marine Court, at its opening yesterday morning, Judge McAdam appeared on the Bench for the first time since his re-election. The large number of lawyers present who had been accustomed to practise before him embraced the occasion to congratulate him on his exceptional success in the recent election, and the pleasure it would afford them to practise before him during his extended term of office. Mr. W. R. Nichols was the spokesman of his brethren, and through him Judge McAdam becomingly returned his thanks for the good wishes of the members of the Bar so generally expressed toward him.

COURT OF APPEALS.

ALBANY, Nov. 7, 1879.

The Court of Appeals will meet on Monday, November 10, 1879. The day calendar for that date is as follows:—Nos. 496, 65, 83, 81, 82, 67, 85, 448.

## NOT ON THE PANEL.

JUDGE NEILSON DECIDES THAT PERSONS NOT REGULARLY DRAWN CANNOT SERVE ON A JURY—THE VERDICT SET ASIDE IN THE BROOKLYN COTTON CASE.

Judge Neilson, Brooklyn City Court, before whom the motion was argued about ten days ago, to set aside the verdict in the action tried before him, in which John R. Dayton and Roger W. Waldo were the plaintiffs and William H. Church defendant, rendered his decision yesterday. The action was brought by the plaintiffs, who are cotton brokers, to recover $1,398 76 which they claimed was due them by defendant, in certain transactions in cotton. The verdict was in favor of plaintiffs, but it was subsequently discovered by defendant that there was an irregularity in the manner in which the jury considered the charge, and also that an unknown man answered to the name of a citizen who had been drawn on the jury panel and had served in his place on the jury. The decision sets aside the verdict. It is as follows:—

The City Court of Brooklyn.—John R. Dayton and Roger W. Waldo vs. William H. Church—Opinion Chief Justice Neilson.—The plaintiffs had acted as brokers for the defendant in contracting for the purchase and sale of cotton. The contracts were on time, and had been, in each instance, closed without the delivery or acceptance of the cotton. The action was brought on an account stated; balance claimed, $1,398 76. The most serious question raised on the trial related to the validity of these contracts. The jury were instructed that if the contracts had been made with the mutual understanding or intent that the cotton was not to be delivered or accepted they were illegal, and the plaintiffs could not recover. That in determining that question the jury were to consider the evidence, the form of the contracts, the course of business pursued and the attending circumstances. In finding the verdict for the plaintiffs the jury appear to have determined that the account had been rendered to and retained by the defendant without objecting to its correctness, and that the contracts were not made with the intent that no cotton should be delivered.

An application is now made on behalf of the defendant to set aside the verdict on the ground that certain irregularities had occurred. It is claimed and by the certificate of some of the jurors (which I shall respect as if it were an affidavit) has been proved that in their deliberations and in agreeing on the verdict they did not consider the question whether it was the intention of the parties in making the contracts that no cotton should be delivered or accepted. It is sufficient to say that it is well settled that the sworn statement of jurymen as to the extent and character of their private deliberations cannot be received to impeach or qualify their verdict. But where the verdict has been erroneously stated to the Court or entered by its clerk affidavits may be received to correct the error. Even this practice, so manifestly in aid of justice, was adopted after much contention. The cases as to such rule are cited in Dairymple vs. Williams, 63 N. Y. R., 361.

A SERIOUS IRREGULARITY.

The other irregularity charged deserves serious attention. Addison Chapman, of No. 141 Java street, in this city, had been drawn as one of the jurors to serve at the term when this cause was tried. The formalities imposed by statute had been observed, the jury list, duly certified by the Commissioner, had been received and entered on the records of the Court and the notices served on the jurors by the Sheriff. Mr. Chapman was thus served. He did not attend the Court as required, but some person who assumed and answered to Chapman's name took the oath and served in his place and stead. He was with the jurors by whom this verdict was found. By what corrupt management that substitution was brought about has not been discovered, and the name, age, residence and occupation of that pretended juryman remain unknown. His character may perhaps be inferred from the crime he committed. But in determining whether this verdict should be respected or not it is only necessary to refer to familiar principles and to some of the cases as nearly akin to this case as can be recalled.

I pass over cases where the irregularity arose from the mistake of the officers in drawing the jury, as in 6 Cowen, 384, and 7 Wend. R., 417; or where the question was one of misnomer merely, as in Willett, 488; or where the juror had in fact been summoned, but by the wrong name, and had the requisite qualifications, as in 12 East, p. 231 (note), and other cases of alleged irregularity somewhat unlike that before us. The case of Hill vs. Yates, 12 East R., 229, is more directly to the purpose. There the son of a juryman whose name was on the panel answered when his father was called and served on the jury. A motion to set aside the verdict was denied. That decision has not been followed in the English courts, and with us was repudiated in the People vs. Rawson, 7 Wend. R., p. 424. In Norman vs. Beaumont, Willes, 484, an action of trespass, damages one shilling, the verdict was set aside because Richard Shepherd, not on the nisi prius panel, answered as Richard Greater, whose name was on, and having been sworn, acted as one of the jury. The same doctrine was laid down in the King vs. Freman, 7 Dowl. & Ryl., 684, and in Dovey vs. Hobson, 7 Taunton, 464—substituted jurors acting and the verdicts set aside.

HOW IRREGULARITY MAY BE PROVEN.

As in such cases the mere record would appear to be complete it was held that the proper mode of raising the question of regularity was by extraneous proof. It is obvious also that where the suitor has no notice of the fact that the stranger taking his seat with the jury is an intruder, nothing in the nature of consent or waiver can be imputed, nor does the duty to challenge apply, says Willes, save to one who "is capable of serving if the objection be answered." Chief Justice Willes and Judge Littledale concur in saying that the intruder "is no juror at all," and in several of the cases where the jury was thus made up the judges refer to the verdict as that of eleven men. In disapproving of the case of Hill vs. Yates, to which we have referred, Judge Sutherland says:—"It appears to me to have been the verdict of but eleven men. The twelfth man was no juror; he was not on the panel. (7 Wend., 424.) I am thus by a strong concurrence of authority—some of the cases civil, some criminal—brought to the conclusion that the verdict in this case cannot stand. It was the verdict of eleven men. But another infirmity attaches. The stranger who personated Chapman was with the eleven jurymen in their room, taking part in their deliberations, apparently entitled to their respect and confidence, and, whether his influence was good or evil, his presence there was improper. In view of all this I am not able to say that the defendant has not suffered from the irregularity. Regarding this as a mistrial the verdict must be set aside, but without costs.

## YALE'S ATHLETIC INTERESTS.

THE SUPERVISORY GRADUATE COMMITTEE AGREED UPON—NO OPPOSITION TO THE PLAN—LACK OF INTEREST IN BOATING MATTERS.

[BY TELEGRAPH TO THE HERALD.]

NEW HAVEN, Conn., Nov. 7, 1879.

The plan of the Yale graduates, formulated jointly with the presidents of the three athletic associations of the university, for the appointment of a supervisory graduate committee to overlook the college athletic interests, was to-night adopted unanimously at a full university meeting, at which also were present the New York and New Haven alumni. At the opening of the meeting President McHenry submitted in writing the plan proposed, points of which have been given to the HERALD. They are substantially as follows:—First—There shall be a supervisory committee. Second—There shall be four graduates and three undergraduate members, the latter being athletic presidents. Third—The graduate part of the committee shall be self-perpetuating. There was only one amendment to this plan, which was the throwing aside the limitation concerning the number of graduate members, and leaving their appointment exclusively to graduates, with the understanding that George Adee and G. St. John, of the Sheffield Scientific School, should be on the committee.

NO OPPOSITION TO THE PLAN.

There was but little discussion over the plan and no opposition. President McHenry explained that all the New York alumni who had been seen were favorable to the proposition. The graduates don't want to interfere with the management of the athletic interests, and have felt a delicacy in doing so. All they desire is to aid the collegiate athletic interests. Chairman Woolsey, of the Preliminary Committee, said that the proposed committee was only advisory, and had no spirit of interference. The graduates have been beaten and had experience which would be valuable to undergraduates. The athletics are now managed well, but there has been hard luck for the past three years, and an experiment is worth a trial under the circumstances. The graduates have studied Harvard's methods, and have schemes to meet Harvard more on an equality. He wanted the university to speak unanimously, and he was sure the New York alumni would indorse the university's action. George Adee, of New York, said he had spoken with many New York graduates, and all had favored the project. He wanted no coercive committee. He thought the New York and New Haven graduates were working toward the same end. President McHenry thought there was some fundamental reason why Yale had been so badly beaten, and believed the graduates could apply the remedy. Other speakers made the points that the captains have such limited experience they can't judge of the necessities always; that the captains would have the advantage of the committee's experience and be freed from the responsibility. There was a long discussion whether undergraduates should be on the committee, which was finally settled in the affirmative.

LACK OF INTEREST DEPRECATED.

Following the settlement of the supervisory plan President McHenry and Captain Rodgers spoke, condemning the real lack of the interest in boating matters, which was unaccountable considering the apparent enthusiasm at the beginning of the term. The substance of the remarks was that there are only eleven men in training for the crew, which is poor encouragement for the labor and money being expended freely. Messrs. McHenry and Rodgers thought there should be two eights in practice. Mr. McHenry said, "We've got to beat Harvard, that's all." Mr. Rodgers thought that one reason for Yale's poor showing was that she was unused to having a crew for the University crew to row against. There must be two eights. Unless more men train Yale might as well give up all hope of beating Harvard. There should be a competitive eight down to the time of going to New London, to give the crew practice. He approved heartily of the supervisory plan, saying that the captain has too much to do, and the movement is the best thing Yale has done for a long time. The meeting then adjourned. The New York and New Haven alumni are soon to elect the members of the supervisory committee.

## WESTERN UNION ATHLETICS.

The fall meeting of the Western Union Athletic Club took place yesterday on the Manhattan Athletic Grounds, at Fifty-sixth street and Eighth avenue. There were seven events on the programme. The first was a 100 yards handicap, two heats and a final one, which was won, after a hard struggle, by Hugo Wiese. Time, 10⅞ seconds. A one mile walk handicap, in which there were seven starters, was won by S. C. Austin in 8m. 30⅛s.; time allowance, 1m. 10s. The half-mile run for messengers in uniform, excited more interest than any of the events of the day. There were six starters. E. Peppard, of Brooklyn, came in first, his time being 2m. 39¼s. The prize in the three-mile walk was taken by S. C. Austin, and the prize in the 220 yards run by Hugo Wiese. In the three-legged race, for which three teams were entered, D. B. Mitchell and C. M. J. Jansen were declared the winners. Six started for the last race on the programme, five miles, "go as you please," and T. Warren came to the front in 30m. 41⅛s.

## CRICKET.

PATERSON VS. NEW YORK—W. BREWSTER'S BENEFIT.

The closing match of the season of 1879 was played at Haledon, near Paterson, N. J., on Wednesday, the occasion being the annual benefit of the well known professional William Brewster. The New Yorkers were the first to go to the bat, and with only nine men contributed the good score of 74 runs. This, however, was exceeded by 9 runs by the Patersonians, their innings closing for a total of 83. Only two innings were played, as the day was cold and disagreeable. Annexed is the full score:—

NEW YORK.

| | |
|---|---|
| G. Giles, Jr., c. Hoxey, b. Brewster | 9 |
| G. Caldwell, b. Hinchcliffe | 18 |
| N. Lendrum, l. b. w., b. Hinchcliffe | 0 |
| J. B. Freed, c. Gourley, b. Hinchcliffe | 7 |
| N. Blayney, run out | 17 |
| R. Letts, c. Hoxey, b. Brewster | 5 |
| W. Giles, run out | 13 |
| J. Allworth, st. Gutteridge, b. Brewster | 2 |
| J. D. Day, not out | 0 |
| R. A. Brown, absent | 0 |
| W. Baird, absent | 0 |
| Extras | 3 |
| Total | 74 |

PATERSON.

| | |
|---|---|
| W. Brewster, b. Giles, Jr. | 12 |
| Rev. G. Gutteridge, c. Giles, Jr., b. Allworth | 8 |
| G. Hoxey, c. Giles, Jr., b. Allworth | 29 |
| F. Loughlan, c. Allworth, b. Giles, Jr. | 10 |
| Hinchcliffe, run out | 7 |
| S. Clough, l. b. w., b. Allworth | 0 |
| James Hinchcliffe, b. Giles, Jr. | 1 |
| D. Frede, run out | 2 |
| J. Gilbert, Jr., not out | 0 |
| W. B. Gourley, b. Allworth | 3 |
| Bullock, absent | 0 |
| Extras | 11 |
| Total | 83 |

RUNS AT THE FALL OF EACH WICKET.

New York—First, 17; second, 21; third, 28; fourth, 59; fifth, 61; sixth, 65; seventh, 74; eighth, 74. Total, 74.

Paterson—First, 14; second, 31; third, 39; fourth, 50; fifth, 61; sixth, 78; seventh, 78; eighth, 81; ninth, 83. Total, 83.

## YACHTING NOTE.

Steam yacht Skylark, N.Y.Y.C., Mr. E. S. Jaffray, from the eastward, passed the HERALD Telegraph Station at Whitestone, L. I., yesterday, *en route* to New York.

## SPORTING NOTES.

George Rooke, the well known boxer, has returned to New York after an absence of three years in London.

Hanlan has received a letter from Colonel Shaw urging him to again visit England and row for the *Sportsman's* Cup. The Toronto sculler thinks favorably of the matter, and, if he defeats Courtney in their proposed new race, will doubtless make the trip.

A regular meeting of the Board of Review of the National Trotting Association will be held at the Fifth Avenue Hotel, in this city, at seven o'clock P. M., on Tuesday, December 2. Communications intended for the consideration of the Board should be forwarded to Secretary Thomas J. Vail, Hartford, Conn., at once.

Keen and Stanton, the English bicyclists, arrived here yesterday in the steamship Adriatic. Stanton had a bad fall at Surbiton on Saturday, October 25, during a twenty-five mile race with Keen, and upon examination it was found that he had sustained a severe fracture of the collar bone. He expects, however, soon to be able to ride.

## NATIONAL FAIR ASSOCIATION.

WASHINGTON, Nov. 7, 1879.

The postponed races of yesterday were trotted today at the National Fair Grounds. The weather and track were all that could be desired and the attendance large.

SUMMARY.

FIRST RACE.—Purse $800, for horses that never beat 2:30; mile heats, three in five, in harness; $400 to the first, $200 to the second, $120 to the third and $80 to the fourth horse.

| | | | | |
|---|---|---|---|---|
| Lyman | 6 | 4 | 1 | 1 |
| Edgar | 1 | 1 | 8 | 8 |
| Stonewall | 7 | 3 | 2 | 7 |
| Peralto | 9 | 2 | 3 | 4 |
| Fitzgerald | 8 | 5 | 5 | 2 |
| Don Quixote | 3 | 6 | 4 | 3 |
| Sweetness | 4 | 8 | 7 | 6 |
| Hambletonian Bashaw | 5 | 7 | 6 | 5 |
| Pilot R. | 2 | dr. | | |

Time, 2:34—2:30—2:30—2:30¼—2:30.

SECOND RACE.—Purse $1,500, free for all; mile heats, three in five, in harness; $750 to the first, $375 to the second, $225 to the third and $150 to the fourth horse.

| | | | |
|---|---|---|---|
| Hopeful | 1 | 1 | 1 |
| Charlie Ford | 2 | 2 | 2 |
| Driver | 3 | 3 | 3 |

Time, 2:21¼—2:22—2:22¼.

## HORSE NOTES.

The following items are from *The Turf, Field and Farm* of this week:—

DEATH OF BROWN DICK.—Another great race horse has passed away. The last surviving direct descendant of imp. Margrave, died a few days since at the stables of his owner, Mr. B. F. Cockrill, Richland Stud, near Nashville, Tenn., in the twenty-ninth year of his age. Brown Dick was foaled March, 1851, by imp. Margrave (son of Muley and mare by Election), dam Fanny King, by imp. Glencoe; second dam Mary Smith, by Sir Richard; third dam by Tennessee Oscar; fourth dam Leabetter mare, by Sir Archy; fifth dam by imp. Piomed, sixth dam by Symme's Wildair, &c. Brown Dick was a horse of remarkable constitution, which he inherited from his sire, imp. Margrave, one of the best stallions ever imported and the sire of some very noted race horses, such as Blue Dick, who was the first horse that ever ran three miles in the thirties in America. Doubloon, whose third heat of two miles, when he defeated Topaz and Charmer in 3:37, has scarcely been equalled to this day. Florin, Fanny G, Victoire, Prince Albert, Emma Wright (the dam of Mollie Jackson) and a host of others. Brown Dick was himself a famous race horse. He won his first two engagements at Mobile in 1853, the Dallas Stakes and another sweepstakes, in which he defeated Frank Waters. In 1854, being then actually four years old, but running under the Southern rules, by which a horse's age dated from May 1, as a three-year-old, he started five times, won four and lost one race. In 1855 he was regarded as second only to Lexington, and many doubted the ability of that wonder to beat him three mile heats. Brown Dick started twelve times, lost three and won nine races; three-mile heats, in 5:30¾ and 5:28, in which he defeated Arrow, Hornpipe, &c. In the same year he beat the crack Floride two-mile heats, in 3:40½ and 3: