National Republican.
THURSDAY MORNING JUNE 23, 1870

Wm. McGarrahan's Great Libel Suit.

THIRD DAY OF THE TRIAL.

WEDNESDAY, June 22.—The court opened at 10 o'clock, a. m. The attendance of the bar and spectators was larger than on any of the preceding days. Messrs. Merrick, Mattingly and Shaw for the plaintiff, and Messrs. Moore, Nathaniel Wilson, Elliot and J. J. Johnson for defendant. After the jury had been called Justice Olin said:

Perhaps it is proper for me to say to you, gentlemen of the jury, that I notice, although I do not encourage it, that you abstain from perusing the report of the proceedings of yesterday's day in the NATIONAL REPUBLICAN newspaper. Just case them by. I have looked over them, and although I think, in the main, they are accurate and correct, still I think it the theory of the law that you are to decide this case on all questions of fact, upon the impression that the testimony has made upon you, and your resolution of what is said.

It is an improper and, I think, an unwarrantable interference with the administration of justice to place before you that which anybody says is a correct account of what took place before me, and to place it in any manner upon your minds, the question of what was said, and the impression the witnesses made upon you, rather than upon a published account in a newspaper. Do not regard my remarks as rough. That is the theory of the law, I think. Some judges have gone so far as to request a newspaper not report the evidence at all. I do not think, but I am entirely willing that the fairest criticism should be made upon the manner of conducting proceedings in this court, and upon the conduct of the parties.

I am a friend of the fullest liberty of discussion, but I think it is due to you to say that you should not read what appears in the newspapers, or what is sought to be fixed you, and not have your mind at all enforcement by reading any publication purporting to give an account of what really was spoken in court. You might mistake a newspaper account from what really took place, when you ought to rely upon your recollection solely.

So far as I have observed this newspaper account of what has taken place in court, I think it is substantially correct. There are some omissions in it that I would like to see corrected, if it is to be repeated as a true report of the proceedings of this court, and I intend shall that. All the wish I have is to see the law administered as the law is. If I commit an error in the discharge of my duty it can be corrected here at the

All that I wish to see is, just keep your mind unbiased, unwarped by what you may read in the newspapers. Do not come even to a published account of the trial. Do not read it at all. Help upon your own recollection and your own impression of what took place in this trial, and not have your mind have errors to do. Therefore, I advise you—although I do not mean to command, or assume to command the right to alter the proceedings of the trial as we go along. It may be right and it may be wrong; you are responsible for listening to the evidence and forming your opinion as to the facts of the case, from the impressions that that testimony makes upon your minds, honestly in the discharge of your duty.

I have thought it proper to say this to you because the paper purports to give from day to day just what took place at the trial on the day previous. I think this newspaper account is not all to be replied to, or even over that amount of it. I want you to form a judgment from what you hear and the impression it makes upon you. It is about as much of an offence to publish an account of that and lay it before you from day to day as it would be to publish the math, you will refer to you from what really was sworn to, and what really was said on that trial, for which men have frequently been committed to jail. I think, gentlemen, have had to allow the fullest discussion of the manner in which justice is attempted to be administered here, I do not intend to make any extraordinary rule—I do not want to impose any more or restrains upon it.

I am perfectly willing that the proceedings in this court should be published. I would be willing, if it would benefit the public, because the public have a great interest in the manner in which justice is attempted to be administered here, and in what that is to, I have to you to keep your minds unpolluted from all outside influences entirely, and for you to conclude the testimony, after the proper time, shall have elapsed, that Out are entitled to, and rule solely upon that. That is the only medium of proof that ought to influence your minds.

Now, gentlemen, we will go on with the case. If you are prepared to do so.

Mr. Mattingly. If your Honor please, we desire to take the testimony of Mr. Gould on the point spoken of yesterday, and have made every effort to get him here. One of the marshal's bailiffs was at the hotel where he was stopping yesterday afternoon, and then again this morning. He tells us he believes Mr. Gould was in, but he was not permitted to see him, and I would like, in order to save time, if the other side are so disposed, to have them go on with this cause and allow us to introduce Mr. Gould's testimony whenever we can get him during the progress of

Justice Olin. You want to prove by Mr. Gould what? What is the materiality of his testimony?

Mr. Wilson. I think there will be no difficulty in obtaining the attendance of Mr. Gould. I happened by accident to be at the Arlington house last evening, and saw him talking with a gentleman there for at least half an hour, and I am sure that he would be very unwilling for any one to say of him that he was endeavoring to avoid the service of process, as I am sure he is not.

Mr. Mattingly. I did not say that he was endeavoring to avoid process.

Justice Olin. But you have not been diligent in finding him.

Mr. Mattingly. Yes, sir. Here is the officer who has the writ. We understand that he was at the hotel several times in the afternoon, and again this morning.

Justice Olin. I think you ought to make an affidavit of the efforts made to serve process on him if you wish to have the trial deferred on that account. I do not quite understand whether Mr. Wilson insists upon Gould being produced here and sworn before he goes on.

Mr. Wilson. We won'd prefer that very much, of course.

Mr. Merrick. Instead of making the affidavit, as the officer who holds the process in his hands is now in court, I ask that he may be sworn and examined by the Court as to the diligence he has used in the discharge of his duty.

Justice Olin. I really do not know how what he swore to here would go upon the records of the court. I think the proper course in such a case is, if you have attempted to subpœna a witness and have not succeeded, that those facts should be stated in an affidavit and filed among the records of the court.

If the counsel for the defendant is willing that he may be called when you can find him, that is another thing, but they have the right in the orderly conduct of the trial to require that you should produce on your part all the proofs you rely upon before you rest the case. So far I cannot very well take the statement of counsel as to the reasons for the non-attendance of this witness at all, because nobody would be able to see, on a review of the case, upon what the court acted.

Mr. Merrick. We will prepare the affidavit.

Justice Olin. If you can get alone in the meantime you may reserve that question for a moment.

Mr. Wilson. I understood they had other testimony. Yesterday evening when we adjourned it was understood two items of proof were yet to be offered. One was the witness referred to, and the other a certain copy of the REPUBLICAN.

Mr. Merrick. With the exception of the testimony of Mr. Gould we rest the case of the plaintiff.

Justice Olin. You want to prove by Gould that——

Mr. Merrick, in answer, proposed to prove by Mr. Gould the agency of a third party in procuring the publication of the alleged libelous articles.

Justice Olin. Well, can we go on with the case and allow Mr. Gould to be re-arraigned when he comes in?

Mr. Wilson. We cannot certainly, your honor.

Justice Olin. Cannot you go on, Mr. Wilson, and permit Mr. Merrick to attempt to make this proof when the witness comes in?

Mr. Wilson. If they prove what they claim to be a fact, (or attempt to prove it, it may very seri- only affect the aspect of our case.

Mr. Merrick. I think it is merely cumulative evidence.

Mr. Wilson. If it is merely cumulative evidence then your Honor will not delay.

Justice Olin. You do not admit that it is cumulative.

Mr. Moore. There is one admission we make, and that is, that it is not true. They cannot prove what they claim when they get the witness.

Justice Olin. So I supposed that you did not admit that it was true; that it had been proved. The question is, whether I shall give them a little time to prove what they claim is cumulative.

Mr. Wilson. I think if they had made any reasonable exertion they might have gotten the witness here.

Justice Olin. They say they want to prove a single fact; and I confess I disagree somewhat with counsel on both sides. I do not think it is of much importance one way or the other, but I think you may go along with the case, the right being reserved to the plaintiff to make the proof they offer of the case when the witness comes in. You, Mr. Wilson, do not think the testimony they offer of much importance—do you?

Mr. Wilson. If they can prove what Mr. Merrick says, it would be of considerable importance. I shall certainly endeavor to keep it out by every possible means. We adjourned yesterday that this proof might be obtained, and we are willing now to wait a half an hour to enable the plaintiff to get the witness, because he is within the limits of the District. To my certain knowledge (although I am not personally acquainted with him) he was in a place of public resort (Arlington House) yesterday evening, and if they send to the hotel for him I think he can be found.

Mr. Merrick. With regard to the diligence we have used, and in reply to Mr. Wilson, I will state that the affidavit, which will be submitted to the court, and which is now being drawn up, will show how far we have exercised diligently, and how far the officers of the court have been diligent in executing the mandate placed in their hands.

Justice Olin. Perhaps, instead of taking time to prepare an affidavit, you had better send somebody out to look for him.

Mr. Merrick. We propose to do that as soon as the affidavit is written. It will be only a moment before it is prepared. We will then send McGarrahan and the officer.

Justice Olin. Can you not send somebody off to look for him while you are preparing the affidavit.

Mr. Merrick. The affidavit is being prepared from the statement of the officer who serves the process, and who knows where he is likely to be found.

I think this cause might be proceeded with, your Honor. All we ask is that we may be allowed to examine him when he comes in under process.

Mr. Wilson. We insist that they shall first put in all their evidence before we proceed. We do not do this for the purpose of delay, for we are very anxious to make all the progress we can; but we feel the interests of our client demands that we should hear all the plaintiff's proof before putting in any of our own.

Justice Olin. The question then involves a delay of the cause for the present, or an order that the cause go on, reserving the right to the plaintiff to produce and examine this witness if his attendance can be secured during the progress of the trial. Of course, I would not let the cause go over on such a point as this. It is only a question as to whether I shall suspend the trial until he is found, which may not be in three months, or whether I shall make an order that they may examine him before the trial closes, if he can be found.

An affidavit setting forth the facts stated by Mr. Mattingly and signed by Policeman McConnell was then read to the court.

Justice Olin. I would like to have stated in the affidavit the object of this testimony. It is true it has been stated in open court, but it would have been as well to have had it stated in the affidavit.

Mr. Mattingly. We have stated the object.

Mr. Elliot. Is the affidavit?

Mr. Mattingly. We cannot state the object in an affidavit.

Mr. Wilson. You can make an affidavit yourself.

Justice Olin. I think I will make this proposition: That the plaintiff may have the opportunity to examine him at the earliest moment, and that you (the defendant) may go on with the trial. Of course if the witness is not here before you get through your evidence, I will not continue the cause that he may be found.

Mr. Mattingly. We do not ask that.

Justice Olin. It is in fact simply an interruption for the present of the order of proof. As an ordinary rule, they ought to give all their evidence before they rest their cause. Yet circumstances in the discretion of the Court may vary that rule. I think I will do it in this case, and let you, Mr. Wilson, go on with your case until they produce the witness at the earliest moment they can do so.

Mr. Moore. If your honor please, the embarrassing aspect of the case is on one side. We expect with a great deal of confidence to be successful in maintaining a motion for a non-suit in this case, and it embarrasses us to be forced to make a motion for a non-suit upon partial proof.

I believe Mr. Clay can docket this in a moment. What the plaintiff offers to prove by Gould will not, in my judgment, affect that question an instant.

Mr. Wilson. Still, your Honor, as a matter of law the Supreme Court have decided that upon all the testimony offered for the plaintiff, as a separate and distinct proof, we have a right to ask on that testimony a non-suit, or a judgment for defendant, but the trouble is we have to make a motion upon a part of the plaintiff's proof and only a part, (hother part having yet to be put into the case, so that if the case is made, and is presented upon the record to the Supreme Court, it will not show a motion for a non-suit upon the whole evidence as offered by the plaintiff, but only upon a part of it. We have a right, without going into any testimony, to make a motion for a non-suit upon the plaintiff's testimony.

Justice Olin. I will regard that motion as properly made just at this point, as though this man had not been sworn and was not to be sworn, if they rest their case here with that qualification. I have told them that they might call the witness, if they desired to do so, when he came; but, whether called or not, if you think you have a right to a non-suit upon the case as now made, I will entertain that motion now without reference to whether Gould comes here or not. For the purpose of this motion, I will treat the case on the part of the plaintiff as if closed. I will then obviate that objection at once. You shall have every advantage that you are fairly entitled to in reference to a motion of that kind. Now, if you desire to make a motion for a non suit, you may make it, and I will regard the testimony for that purpose on the part of the plaintiff as closed.

Mr. Wilson. Not meaning to exclude the testimony of Gould if he should be produced as a witness?

Justice Olin. If I should non-suit the plaintiff of course he will not be produced.

Mr. Wilson. Still our motion would not be upon the plaintiff's whole testimony.

Justice Olin. Yes, it would be upon the plaintiff's whole testimony as it appears now.

Mr. Wilson. Your Honor, it would be only upon a part of the case. A motion of that kind can only be entertained when all the evidence is in on the part of the plaintiff.

Mr. Merrick. For the purpose of having this motion determined, I am willing to rest the case here. Gould may be considered out of the question for the purpose of a motion for a non-suit.

Judge Olin. I really do not think that your offer of proof by Gould affects the case at all upon its merits, other than in the way I have indicated.

Mr. Wilson. The difficulty, your Honor, is that if, upon making a record of this case it shall appear and shall be held to be the law, that we have only the right to move for a non-suit when all the testimony on the part of the plaintiff is in, the time when the testimony is allowed to go in clearly the occasion on which we have a right to move for a non-suit has not arisen.

Justice Olin. No, Mr. Wilson, you are entirely mistaken about that. The question would only arise if upon the whole testimony in as the case you made that motion you were entitled to it. If I erred in deciding it, then it would be error; and it would not affect the question at all if subsequently other testimony were let in. The question would be whether the court decided right or wrong when the motion was made. There is no difficulty at all about it, as I understand the practice.

Mr. Wilson. My understanding was, your Honor, that a motion could only be made when the plaintiff had actually closed his case.

Justice Olin. He has closed his case, as I told you now, for the purpose of this motion. It rests in my discretion whether I will let him prove anything else after he has thus rested his case. I say, under the circumstances if he can bring Gould into court he may swear and examine him; but for all the purposes of the motion this testimony is closed. I will rule upon that motion if you desire. If the testimony were in or out it certainly would not affect your right to move for a non-suit, suppose Gould were already sworn or examined.

Mr. Wilson. Then clearly, your Honor, it would make no difference. The only apprehension I have, your Honor, is that it may not be correct to say that the testimony may be considered closed for one purpose when for another purpose it is admitted.

Justice Olin. Very likely. It would be closed, would it not, if I granted your non-suit.

Mr. Wilson. It would be closed for undoubtedly; but if the motion for a non-suit is not granted, and then testimony is subsequently admitted, undoubtedly there can be no objection made to our motion for a non-suit. Undoubtedly the objection could be made to our motion for a non-suit that it was not upon the whole testimony as offered on the part of the plaintiff. Our right for a non-suit rests, as I conceive, upon the fact that the plaintiff's case is closed. We have no right to make it until the plaintiff's case is closed. If we make it when the testimony is not in fact closed, and other testimony is admitted, when our motion for a non-suit comes to be reviewed in another court, the objection will be taged, and with force "It is true you made your motion, but you did not make it upon the whole case, as presented upon the part of the plaintiff."

Mr. Merrick. I waive the objection on the record.

Mr. Wilson. If there is any way of protecting ourselves in that, then the only obstacle that I see would be removed.

Justice Olin. I should be very much surprised if there was either law, philosophy or anything else in the objection you make. I do not understand it so. I ought to be somewhat familiar with questions of that kind after thirty years' practice in the courts. There certainly can be nothing in it as I understand it. If there is no case now before the court upon the proofs of the plaintiff, you are entitled to make a motion for a nonsuit. If that motion be overruled by the court improperly, then you have the benefit of your exceptions, and the ruling will be reviewed by the Appellate Court. There is another principle that you have hinted at, rather than expressed. If the case was imperfect at the time you made the motion, but the defect was supplied afterwards in the course of the trial—after the motion was denied—perhaps you could not reverse the judgment; for the defect that appeared when you made the motion had been after the proof in the course of the trial supplied, and thus the defect on which you relied cured. That is a rule of law pretty familiar to all good lawyers.

But as I have stated to you, the proof offered to be given would not, in my judgment, affect the case one way or the other. It is simply whether this proof is important and pertinent to diminish or enhance the damages in the case. That is all the relevancy it can have. Of course it has no foundation, and can in no way affect your right to a non-suit if you are entitled to it. If the action depended one way or the other upon anything they offered to prove, I would either stop the trial or make a different order upon it, requiring them to make out their cause of action before they rested. I think the rule I have laid down a fair one. I think it a fair way to give you every advantage that you could wish, and give you every benefit that you could obtain by the exercise of all the liberty and indulgence that the Court could give you. I am determined after what has taken place here that you shall have, and your client shall have, every opportunity of defence within the possible limits of the law as I understand it. Sitting here to judge according to law—God being my helper—I will do that, even though insulted by an affidavit of the kind that was presented to me here in court. Now the order is that the party may have liberty to call and examine Gould at any time before you close your proof at the earliest moment they can examine him.

Mr. Moore. Your Honor will add to that the objection that I am making now, and your honor will see all through in my comments on this that I have endeavored to draw a distinction between what was said of that claim and of McGarrahan. I think your honor will see, upon inspection of this article, that although it may be true, as your honor says, that the charge as to the claim involves an imputation upon the character of the party, yet it is not so charged, and it is not so in the words that are quoted.

The words relate to a claim or suitable or whatever else it may be called, and the result of this is just this, which I conceive to be the law and shall ask your Honor to rule, that there is in law a very great distinction between a remark on an occasion in regard to a claim or a thing and an accusation in regard to a person; and that although these words may be libelous, yet they are only made libelous when connected by proper averments with some distinct damages and injury that was the result of the publication of these words. That is to say, that in order to make these words which relate to a claim or thing actionable, there must be an allegation of special damage in the declaration and there must be proof to support that charge for special damage that there was in the character in which the plaintiff sues here some direct injury to him, some allegation of damage which he sustained. I conceive that to be the distinction which the law makes.

Justice Olin. I do not quite understand you. State your proposition again, please.

Mr. Wilson. It is just this: There is manifestly a distinction between any remarks that may be made about a person, his character, and about a thing of which he is the owner, or the business in which he is engaged. Words may be used in regard to a person which are actionable per se, and which would not be actionable in regard to a thing or a business unless accompanied with an allegation and proof of special damages resulting from them. That is the proposition.

Justice Olin. Is that true?

Mr. Wilson. I think so.

Justice Olin. Do you think that was a very wicked claim, and it was wicked because it (the claim itself) was? Or do you think the natural inference would be that some body was wickedly prosecuting the claim? The claim did not do anything.

Mr. Wilson. I will illustrate that again in this way: In the publication of a book there may be used words, some epithet and some remark, or, perhaps, not perhaps, but certainly, some critisms in regard to a particular book, and in regard to the ideas, doctrines and statements contained in that book, and yet that is a very different thing from what the same remark would be, or similar expressions, if used in regard to the publisher or author of that book. I say that the same distinction exists here upon what may be said, or upon what had been said by the pubblication of Mr. McGarrahan, and as against a claim which was merely something which he was prosecuting before Congress. I say that in order to make actionable what was said in regard to the claim it is necessary that there shall be an allegation that there was such a claim pending before the courts, and that there were damages resulting to him; special damages, if you please, from the words that were used in the publication.

Justice Olin. You do not mean to say, as a proposition of law, that when language is in itself libelous, it must be followed by special damages in order to recover, that when you have to point it by innuendo to its application to the plaintiff, then you must aver and prove special damages, or what is the proposition?

Mr. Wilson. I thought I had made myself understood the last time. I say there is obviously a distinction between saying of McGarrahan's claim before Congress that that claim is fraudulent, and saying in regard to McGarrahan, "You are a thief. You tried to steal land, and you are now trying to steal land." Of course, in an action for slander, it would not be actionable per se to say that a man was guilty of stealing land, trying to steal land, because land was not a subject of larceny.

It has been held over and over again that there must be imputed to him some indictable offence. I say the same distinction must exist in regard to a person, the individual character of a man, and the business in which he is engaged, and in order to make words actionable which relate to a claim or business it is necessary that there should be an averment of proof of special damage. That is the proposition; that it is not the same to say of the McGarrahan claim, that it is a swindle, and to say of McGarrahan that he is a swindler.

Justice Olin. You say in the one case that the law would imply damages, and in the other special damages must be averred and proved. Now if you can show me an adjudicated case in a court as high as that of a justice of the peace regarding that question, I would like to see it.

Mr. Wilson. As I stated before, I do not propose to argue it, because the condition of my health will not admit of my making an argument to-day. Your Honor will see that in this case they have not inserted as part of the objection, because they have referred in the introduction of this declaration to the fact that at the time of committing the libelous complained of the plaintiff was prosecuting the Congress of the United States an application for the confirmation to him of a grant or certain lands in the State of California.

Your Honor will see that it is in this character of a person having a claim before Congress that these words were used, and that is another reason why these words are not to be taken against him personally, and not against him as being a claimant before Congress.

Then there is the insertion of those words which relate to the claim which he says he had pending before Congress, winding up not with any allegation of special damages but merely with the ordinary allegations that he suffered in his reputation in consequence of the diffusion of these reports; and I say that from the fact that there is no averment that he had a claim offered you the part of the plaintiff, there is not any proof that he had any claim pending before Congress at the time these words were uttered.

Justice Olin. You stated in your opening and in the article that he had.

Mr. Merrick. Yes, sir; that is admitted.

Justice Olin. We may take that fact as admitted.

Mr. Wilson. I say no proof of it has been offered on the stand to support that allegation; and I say, moreover, that these words are only actionable as having been used in regard to this claim, and not as against McGarrahan personally; and it is on y by using the innuendo to enlarge the meaning of the words that are quoted from the paper that they can be made applicable to him personally; that we are entitled to a non-suit, because they have not alleged or proved any special damages.

Justice Olin. Do you wish to be heard, Mr. Moore?

Mr. Moore. I have no great anxiety about it, if your honor pleases, except the confidence I have in the correctness of the legal proposition as to this libelous matter in regard to the property—the land.

Justice Olin. You think that they libeled the land or the claim rather than McGarrahan.

Mr. Moore. I do not think anything, if your honor pleases, when I undertake to argue a legal proposition, except what I attempt to derive from the distinctions which the law itself makes. I know of no such thing as general damages, so far as I have read law books, resulting from what your honor may say about me in the character of a profession or about me as the owner of land. It is a special subject in its very nature, and when a libel is published, a libel in relation to a specific property, the damages are regarded in the law books as special, and they must be averred and proven.

Justice Olin. To illustrate that, suppose I write a note and publish it that you were a poor lawyer and a great knave, and clients ought not to entrust you with business, do you say that on suing me for a libel that you would have to prove that you had lost money by it?

Mr. Moore. If your Honor please, if you were to publish slanderous words of me in relation to my character as a lawyer, I would be compelled to aver that in my profession I suffered a loss by reason of those words, and would have to prove that some injury resulted. Where the words are uttered in relation to the character of an individual, separate from a profession, or, as occupation, where they affect his general character by impeaching him of a crime, such as would be actionable per se, or made actionable by proper averments, then damages, as I understand the law books, are general, and do not have to be specially averred or specially proven.

Now is it, if your honor please, that if you say a man is a thief, and you qualify it by saying that he stole my land, those words are not actionable in reference to the character of the individuals as to whom the words are uttered, because in the very nature of things the subject-matter of the theft is not the subject of larceny. If you slander a man's title to land, and he prosecutes a suit against you for thus slandering his title, he must show that some injury has resulted to the property by reason of the publication of the libel, or the utterance of the slanderous words. If I publish that your honor has no title to the land, or the house and lot, where your honor lives, or that you obtained the title by fraudulent means, no damages could lie from the utterance of such words, although they might be considered libelous, unless your honor proved that in some way the thing uttered had by reason of the utterance of the words.

Now, if I am correct, may it please your Honor, in taking a distinction between what is the subject of special damages and special averments, it surely applies to this case so far as it regards the claim of McGarrahan.

I am speaking now independently of its connection with his personal reputation, and I beg your Honor, in the consideration of this question, to separate the personal reputation of Mr. McG. from the idea of his claim to property, for they are blended together in this declaration, and the general claim of damages is averred in the declaration without any reference to any distinction between the injury he has sustained to the character of his claim and the injuries resulting to his personal character. There is no averment in the declaration that McG. has sustained a cents worth of injury by reason of what was said about his defective or fraudulent claim to that property.

I will now read a paragraph from this book, "Townsend on Slander." It is a new book, and I presume it must be a good one from its appearance.

Justice Olin. The rule used to be different that no new books were to be read at all, but perhaps because it is new, it is better.

Mr. Moore. It has long since been discovered that Solomon was mistaken when he said there was nothing new under the sun. I do not adhere to that old rule.

I read from paragraph 129: "And besides to give a cause of action for language concerning a thing, special damages must in all cases be alleged and proved."

Now, Mr. McG., in this declaration, avers that he has a claim pending for a species of property before the Congress of the United States, and that the defendant, in his newspaper, published of and concerning the rights of Mr. Garrahan's, certain defamatory words, to wit, that it was founded in fraud, and it is iniquitous, and every other epithet, if you please, which the English language is capable, may be imagined to have been applied to that claim, and your Honor may conceds that the words are libelous in reference to the claim.

Justice Olin. The claim is liable—is that it? ...is is not worth arguing a moment. If they do not point this language by some averment to the effect not that the claim was dishonest in and of itself, but that somebody was prosecuting the claim dishonestly, why of course no suit for libel can be maintained.

Mr. Moore. Your Honor will indulge me just a moment. I do not intend——

Justice Olin. Now, another thing. As I allowed you to amend your pleading in any way you saw proper, if it were necessary in regard to the declaration, which is not very artistically drawn—though I think it is sufficient in itself—I should allow any averments to be made to point to what they prove to be the charge here. So I do not think it worth while to argue the question very long.

Mr. Moore. I certainly, under that intimation of the Court, shall not attempt to weary the Court with but one other suggestion in reference to that point, and that is that if the counsel for the defendant were to aver that they point the libel and make it here referred to, bad faith or fraud, or something in the prosecution of it, there is no offence committed against the right of the plaintiff.

Justice Olin. Certainly.

Mr. Moore. But we have moved, your Honor, to non-suit the plaintiff upon the ground that only that there is no averment in this declaration that any injuries have resulted to property or to the property made upon that claim.

The merits of the claim—that that there is no evidence of good—offered in this whole record that Mr. McGarrahan was interrupted, interfered with or suffered any injury in the prosecution of his claim before the Congress of the United States.

Justice Olin. Very likely.

Mr. Merrick. Did you read the whole of the paragraph No. 129 in this book—Townsend on Slanders?

Mr. Moore. No, sir. I read so much as related to the principle I was asserting.

Mr. Merrick. I think your Honor ought to cover the following portion; I will read it.

Mr. Merrick then read as follows:

"The rules relating to slander of title apply to all language concerning things, but where the language is not actionable in itself, it is governed by the same rules as other language concerning persons."

Mr. Moore. I was coming to that distinction. [Laughter.]

Mr. Moore, (turning to counsel.) Well, gentlemen, perhaps it may be a legitimate subject for merriment, and I am about as good-natured as anybody I know of, and fond of giving a history of Claude Duval. [Laughter.] Now, strike out from this declaration all that relates to the claim of McGarrahan, and there is not a syllable in the declaration that would be regarded defamatory of his character, unless you make it by innuendoes, as I conceive, which would be entirely too far-fetched. Such, for instance, that Claude Duvall was the subject of English romance and history. A great many incidents are told in the history of that man's life which might leave it a matter of doubt whether he was a very bad man or not, if the history of the man be true. May be, however, there was more than one Claude Duvall. [Laughter.]

Justice Olin. Who was his biographer?

Mr. Wilson. Harrison Ainsworth.

Mr. Moore. I do not know whether he had any biographer, or was a priest after the order of Melchisedec, without beginning of days or end of time. [Laughter.]

Your Honor has indicated that you are satisfied about this motion, and I will not trouble you further.

Justice Olin. Without going into any lengthy statement of the reasons that control my action in the case, I will simply say that the motion for a non-suit is denied.

I think limiting the innuendoes to the smallest limits within which the meaning of the paper is to be restrained, there is a course of action set out and proven. I do not think it is necessary at all to say that McGarrahan's claim was defeated in consequence of these publications, or that he received any injury whatever. The law presumes that wherever a man is libeled unjustly he does receive injury, and that is always an answer for a motion to a non-suit.

[illegible] judge he receives is a question for the jury, and not for the Court. But the law presuming, and I think the fair intendment of this, although the complaint is not very artistically drawn, is that McGarrahan was improperly prosecuting a fraudulent claim before Congress a swindle, and that language unless it be proved to be true is an offence. A crime punishable not only by indictment and imprisonment, but it is punishable, too, by way of damages, and it is the same offence, only worse in degree, where you charge your neighbor, an honest man, with a crime for which he may be indicted.

In this case he gave only wider publicity to it, which is regarded to be a more serious offence than spoken slander, but subsequently to be governed by the same rules of evidence and the same rules of law. The motion for a non-suit is therefore denied.

Mr. Wilson reserves an exception.

A recess of ten minutes was here taken.

ERRATUM.—The announcement of the appointment of Samuel Norment, esq., as one of the commissioners to the Washington Asylum was incorrect, as John A. Simms has not as yet been removed from the board of commissioners. Also, the name of G. W. Larner as having received the secretaryship of the commissioners is an error, as Gustavus Kulman still continues in the above position.

The announcement of the appointment of an assistant clerk of the Northern Liberties market is likewise an error, as no such office exists.

These names were all on the list of appointments given our reporter, and the mistakes must have occurred in the Mayor's office in the hurry incident to the day.

THE WASHINGTON COUNTY HORSE RAILROAD.—The county horse railway is a fixed fact as the committee having the matter in charge have received assurances that if the Washington and Georgetown Railroad Company do not make connection with the road the Metropolitan and F street company will extend their road out Ninth street to connect with the county road, stock it and take a fair proportion of the stock.

THE TRIALS OF LIFE.—What shall I do? I am so debilitated that I cannot attend to my ordinary duties. Try Speer's "Standard Wine Bitters;" they are unsurpassed, and will act favorably on all the functions of your system, and restore them to vigorous action. They are simply Speer's wine, without medication, except by such herbs and roots as Physicians use daily. cod3t

A SUNDAY EXCURSION.—The steamer Lady of the Lake will leave her wharf on Sunday afternoon at 3 o'clock for Piney Point on an excursion to Glymont, this being the first of a series of Sunday afternoon trips she intends. The trip is to be conducted along the best possible principles, and a very agreeable afternoon may thus be spent.

PRICES DOWN AT LEWIS', 320 SEVENTH STREET.—Great reduction in prices in hats, gent's furnishing goods, trunks, traveling bags, valises, &c., &c.

A very large stock of ladies' trunks cheap. Gent's shirts, hosiery, underclothing, &c., at greatly reduced prices. Guyot's suspenders, linen handkerchiefs, paper and linen collars. Neck ties and fancy articles for toilet use. At the one price store. CHARLES LEWIS, 320 Seventh street, between I and E.

THE DAYLIGHT "MEDIUM."—In our notice of Dr. Wright's exposure of the tricks of the "so-called" spiritual mediums at Lincoln Hall, we inadvertently said on Saturday night instead of Friday, the night on which the doctor is to show up the medium. We hear the threatened exposure creates quite a stir in the little world of spiritualists.

INDUCEMENT TO BUY A GOOD SEWING MACHINE.—Wilcox & Gibbs' Sewing Machine, the most simple and best constructed sewing machine, will hereafter be sold on liberal terms. Inquire at the agency, Baum's corset and hoopskirt factory, 450 Seventh street, between D and E.

W. S. THOMPSON, at his drug store, No. 209 Fifteenth street, corner of New York avenue, calls the attention of the public to his choice lot of medical waters on draught, such as Vichy, Kissenger, Seltzer and Congress; which are as cool as the coolest, and good as the best.

TO-DAY being the feast of St. Aloysius there will be services at St. Aloysius church this evening at 8 o'clock, at which time Rev. John J. Kane, of St. Patrick's, will deliver a discourse on the life of this saint.

A PLEASANTLY located brick house, No. 304 D street northwest, is for rent. For particulars, application can be made of W. S. McFarlan, room No. 6, Columbian College law building.

THE MOUNT VERNON ASSOCIATION.

Yearly Crowell of the Vice Regents.

Yesterday morning the steamer Arrow conveyed a select party of ladies and gentlemen to Mount Vernon for the purpose of being present at the yearly reception of the vice regents of the Ladies' Mount Vernon Association. Among the company were Senator Stockton and lady, W. W. Corcoran, esq., Gen. Giles A. Smith and lady, Mr. Fox, agent of the Baltimore Associated press, and ladies, Mr. O'Brien and ladies, and others.

After a pleasant run of two hours the Arrow landed her precious freight on the wharf at Mount Vernon, and soon little groups were to be seen visiting the many points of interest in and about the homestead of the Father of his Country.

The annual council of ladies were in session but on the arrival of the visitors a recess was taken and a reception was held. Among the ladies present were: Mrs. Morse, of Louisiana; Mrs. Swett, of Maine; Mrs. Jas. Brooks, of New York; Mrs. Halstead, of New Jersey; Mrs. Harry, of Illinois; Mrs. Eve, of Georgia; Mrs. Walker, of North Carolina; Mrs. Compton, of New Jersey; Mrs. General Emory, of the District of Columbia; Mrs. Bingham, of Pennsylvania; Mrs. Chase, of Rhode Island; Mrs. Mitchell, of Wisconsin; and Mrs. Washington, of West Virginia.

After the reception the vice regents partook of an elegant collation prepared by the direction of the regent of the association, Mrs. Cornelia Cunningham, who was unremitting in her efforts to render the occasion one of interest and pleasure. After the collation the visitors were escorted through the mansion and grounds.

The old outhouses of General Washington was found to be in most excellent order. The rooms have recently been refurnished, and present a very neat appearance. The main stairway has been fitted with a neat Brussels carpet, the gift of the State of New Jersey, which State has also at its own expense fitted up the room in the second story which was occupied by General Lafayette during his stay at Mount Vernon. The grounds are in fine condition, about thirty acres being under cultivation, while the new conservatory is in operation, and the sale of flowers is certainly to be quite a large one. Among the attendants, John Alexander, the gardener and servant of the Arrow, was in charge of the steamer, and added much to the enjoyment of the visitors by his lively conversation and desire to show and explain everything to the visitors. The old Virginia gentleman seems quite ample opportunity to afford all every their visit, to believe the departing of the hour, as hour beyond the regular time. About 4:30 p. m., when all had come on board the steamer was headed for Washington, the company arriving safely and delighted with their visit. The council held another session and reception to-day, the Arrow leaving her wharf at 11 o'clock.

Local Brevities.

Eliza Williams was fined $5 by Justice Handy for drunk and battery on Alice Hanson, and $1 for using indecent language.

Lottie Hanson was also fined $1 for indulging in the latter offence.

An abandoned colored male infant, was brought to the Second precinct station-house yesterday morning by a colored woman named Rachel Thomas, who stated that she found the child in an alley adjoining her residence.

It is said that the contractor for the First ward is laying brick in a lot of red clay, instead of sharp gravel and sand as the law directs.

John Shea gave security for court for assault and battery on Martha Shea.

John Williams, colored, for beating Jane Wright, paid the costs and costs.

About 7 o'clock on Tuesday evening a horse attached to a carriage took fright on Maryland avenue, between Sixth and Seventh streets, and ran off, throwing out Frederick Wright, son of Major Fred. Wright, United States arsenal, and injuring him quite severely.

Dr. C. H. Gragle, lately appointed postmaster of Georgetown, will assume the duties of his office on the 1st of July.

About 3:30 o'clock yesterday morning some person entered the house of Mr. Phillips, 419 Tenth street, by forcing open the back window with an axe. Nothing was missing.

John Duffees was fined $20 by Justice Clark for selling goods by sample without license.

At 9 o'clock on Tuesday morning fire was discovered in the house of John Scott, on K street, between Third street and New Jersey avenue, which originated from the stove-pipe, and setting fire to the weather-boarding of the house. Prompt action extinguished the flames by a few buckets of water, without creating an alarm. Damage slight.

The remains of Dr. Rudolph B. Hitz, whose death in Montana we mentioned some weeks ago, having arrived in this city, were interred in the family lot in the Congressional cemetery, on Tuesday afternoon.

The navy yard bridge has been temporarily repaired under the direction of Major Timothy Lubey. The Major did the best he could without money, but the fact is the quicker the old rotten structure is demolished, and a decent one erected the better it will be for travelers.

It is reported that a movement is on foot to consolidate the Washington and Georgetown Horse Railroad, and lay a grand round foot during the coming month.

Rev. Father Bokel, for years past a pastor of St. Dominick's church, Seventh ward, has been transferred to St. Rose, Kentucky, and he left on leave for his new post. His hosts of friends in this city will hear this with regret.

THE PRESBYTERIANS.—The Washington city presbytery, as constituted by the synod of Baltimore, has organized by the election of Rev. John C. Smith, D.D., as moderator, and Rev. T. R. McFaile, clerk.

At the meeting for organization seventeen churches of the presbytery were represented by the following ministers: Rev. J. C. Smith, William McFaile, D.D., T. R. McFaile, John L. Cocoule, John L. French, S. Teste, D.D., Gurley, Hoge, Fox, E. F. Hillmeyer, W. T. Van Doren, J. E. Nourse, S. S. Mitchell, Mason Noble, D.D., Byron Sunderland, D.D., William Hall, J. S. H. Henderson, G. W. McCampbell, H. P. Duckett, Thomas E. Murphy and John H. Beckwith. The names of the ministers were ordered to be placed on the roll according to the date of their ordination.

The following standing committees were appointed: Home and foreign missions, educational, publication, sabbath school, relief, and church erection. The committee nominating candidates for the ministry was assigned to the committee on education. Rev. J. V. A. Shields was chosen treasurer of the Presbytery. The salary of the stated clerk was fixed at $50 per annum. It was agreed to hold stated meetings on the first Tuesdays of April and October. The session of Assembly church was granted leave to supply their pulpit until the next stated meeting of the Presbytery. The same permission was granted to the churches on Sixth and Fifteenth streets. A committee was appointed to prepare standing rules to submit to the next meeting for the government of the Presbytery, after which the Presbytery adjourned to meet in the New York avenue church on the 4th of July.

This Presbytery has under its care all the churches heretofore in connection with the "Potomac" and "District of Columbia" Presbyteries, and all the Presbyterian ministers within its jurisdiction are invited to unite with it, whether engaged actively with the churches or employed in secular pursuits.

A JUST PUNISHMENT.—William H. Rodgers, a young man who should have known better, was standing in front of Military Hall on D street, between Ninth and Tenth, and made use of a very insulting remark in reference to the wife of Mr. Fred. Kohler, the proprietor of the hall. That gentleman very promptly struck the tradducer in the head with a brick. Rodgers fell as if dead, and was carried into the Tontine and D